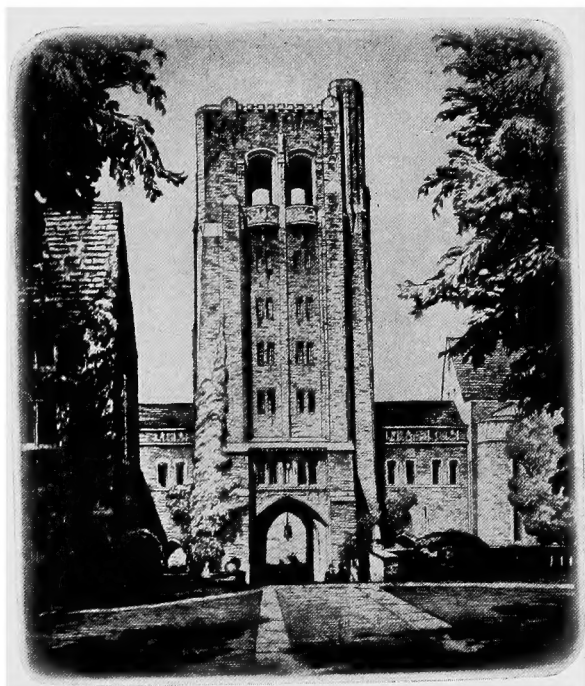


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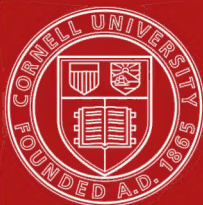


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A TREATISE
UPON
FRENCH MERCANTILE LAW
AND THE
PRACTICE OF THE COURTS,
WITH
FORMS OF PROCEEDINGS AND PRACTICAL INSTRUCTIONS
TO ENGLISH SUITORS,
ACCOMPANIED BY A NEW TRANSLATION OF THE ENTIRE
CODE OF COMMERCE
AND SPECIAL
MERCANTILE LAWS
IN FORCE IN FRANCE AT THE PRESENT TIME.

BY
NAPOLEON ARGLES,
Solicitor of the Supreme Court.

LONDON: WATERLOW BROS. & LAYTON
PARIS: GALIGNANI.
1882.

B17366

LONDON :

WATERLOW BROS. AND LAYTON, PRINTERS,

BIRCHIN LANE, LONDON, E.C.



TO

M. LEOPOLD GOIRAND,

Avoué près le Tribunal Civil de la Seine,

IN GRATEFUL RECOGNITION

OF

MANY YEARS OF FRIENDSHIP AND PROFESSIONAL ASSOCIATION,

THIS WORK IS DEDICATED

BY

THE AUTHOR.



PREFACE.

THE following treatise has been written principally for the use of the Legal Profession in the United Kingdom. Its aim is to guide and assist them, and to enable them to advise upon the subjects contained therein when called upon to institute proceedings in the French Courts and Tribunals, or to transact other legal business in France or behalf of their clients.

The Author, having practised for several years as an English Solicitor in Paris, is familiar, from experience, with the points upon which Solicitors and Barristers in England most frequently seek for information in relation to French legal procedure, and his object has been, as a perusal of the Table of Contents will demonstrate, to render the work as exhaustive as the limits of a general treatise will admit.

The first portion treats of the Judicial Organisation in France, the practice of the Courts, and contains a Commentary upon Bills of Exchange, Bankruptcy, Partnerships, Limited Liability Companies, and other important subjects, together with forms of proceedings and practical instructions to suitors.

In Part II. will be found a textual translation, by the Author, of the entire existing French *Code of Commerce* * and of the principal

* Previous to the reign of Louis XIV., no special code or body of laws existed in relation to mercantile or maritime commerce. During the above reign, however, trade commenced to flourish, and the imperfections of the existing laws became manifest, and during the ministry of Colbert, the celebrated *ordonnance* of the month of March, 1673, was drawn up, comprising enactments upon inland commerce, and the most important mercantile contracts.

This *ordonnance*, composed in great part by a merchant named Savary, contains 12 *titres*, or headings, corresponding principally with the *titres* of the existing Commercial Code.

supplementary *Mercantile Laws* which have been passed at various periods since its promulgation.

The Appendix contains the provisions of the *Civil Law* referred to in the Commentary and Text of the Code. The Author has arranged them in a separate chapter, in preference to encumbering the work with footnotes constantly repeated.

Special attention is directed to the *Dictionary of French Legal Terms* appearing in the work, for which concise English equivalents do not exist.

A very complete and copious *Index*, an indispensable feature in a treatise upon foreign law, is added, and this, in conjunction with the

In the same reign, and during the same ministry, the *ordonnance* of August, 1681, upon maritime law was published. It was divided into five books, and comprised the following subjects :—1. Admiralty ; 2. Of ships and seamen ; 3. Of maritime contracts ; 4. The regulation of ports ; 5. Fisheries.

This *ordonnance* was received with enthusiasm, and generally adopted throughout Europe.

Notwithstanding the care with which commercial law was codified by the *ordonnances* of 1673 and 1681, a revision of this division of the law became called for, and in 1787 a commission was instituted to revise these *ordonnances* and mercantile law in general. The labours of this commission were interrupted during the Revolution, and it was not until the 3rd April, 1801, that a new commission was organised to draw up a project for a Code of Commerce. This project was communicated to the Tribunals of Commerce, the Court of Cassation, and to the Courts of Appeal, and subsequently revised and discussed in the Council of State, and alternately adopted by the Corps Législatif.

Pursuant to Art. 1 of the law of the 15th September, 1807, the provisions of the Code of Commerce were decreed to come into force on the 1st January, 1808.

The Code of Commerce is divided into Four Books :

The first is intituled *Of Commerce in General*.

The second „ *Of Maritime Commerce*.

The third „ *Of Bankruptcies and Fraudulent Bankruptcies*.

The fourth „ *Of Jurisdiction in Commercial Cases*.

The FIRST Book comprises eight divisions or *Titres* :

| Titre | I. treats of | Traders... | ... | ... | ... | Articles | |
|-------|--------------|---|-----|-----|-----|----------|---------|
| II. | „ | <i>Books of Traders</i> | ... | ... | ... | „ | 1—7 |
| III. | „ | <i>Partnerships and Companies</i> | ... | ... | ... | „ | 8—17 |
| IV. | „ | <i>Separation of Property</i> | ... | ... | ... | „ | 18—64 |
| V. | „ | <i>Stock Exchanges and Brokers</i> | ... | ... | ... | „ | 65—70 |
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Appendix will, it is trusted, materially assist in the elucidation of the Text and Commentary.

NAPOLEON ARGLES.

85, GRACECHURCH STREET,
LONDON, E.C.
May, 1882.

The SECOND Book comprises fourteen divisions or *Titres* :

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| " | III. | " | <i>Shipowners</i> | ... | ... | " | 216—220 |
| " | IV. | " | <i>Of the Captain</i> | ... | ... | " | 221—249 |
| " | V. | " | <i>Hiring and Wages of Crews</i> | ... | ... | " | 250—272 |
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| " | XIV. | " | <i>Exceptions and Pleas in Abatement</i> | ... | ... | " | 435—436 |

The THIRD Book comprises three divisions or *Titres* :

| | | | | | | | |
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| " | II. | " | <i>Fraudulent Bankruptcy</i> | ... | ... | " | 584—603 |
| " | III. | " | <i>Reinstatement (in bankruptcy)</i> | ... | ... | " | 604—614 |

The FOURTH Book comprises four divisions or *Titres* :

| | | | | | | |
|-------|------|-----------|---|-----|----------|---------|
| Titre | I. | treats of | <i>The Organisation of Tribunals of Commerce</i> | ... | Articles | 615—630 |
| " | II. | " | <i>Jurisdiction of the Tribunals of Commerce</i> | ... | " | 631—641 |
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| „ | III. „ <i>Shipowners</i> | „ | 216—220 |
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| „ | X. „ <i>Insurance</i> | „ | 332—399 |
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| | | | | | |
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REFERENCE CATALOGUE

OF

FRENCH AND OTHER LEGAL WORKS

UPON THE

MERCANTILE LAWS OF FRANCE

CONSULTED BY THE AUTHOR.



COMMENTARIES

AND

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Dictionnaire de droit commercial, Ruben de Couder, 6 vols., edition 1881.

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JUDICIAL SYSTEM IN FRANCE.

CHAPTER I.

Tribunals and Courts.

Order of Precedence.

Degrees of Jurisdiction.

Tribunals and Courts.

Two classes of Tribunals exist in France for the administration of justice, viz., **ordinary** Tribunals, and **special** or **exceptional** Tribunals. Ordinary and special Tribunals.

The ordinary Tribunals are those which adjudicate in all cases which have not been specially withdrawn from their jurisdiction by law for decision by other Courts.

The special or exceptional Tribunals confine themselves to adjudicating in cases referred to them, pursuant to special legal enactments.

The following are **ordinary** Tribunals:—

Tribunaux d'Arrondissement,* or Civil Tribunals of First Instance.

The Courts of Appeal.

The following are **special** Tribunals:—

The Justices of the Peace.

The Tribunals of Commerce.

The "*Prudhommes*."†

The *Tribunaux Administratifs*.‡

In addition to the above Tribunals, a Supreme Court of Appeal is established, called the Court of Cassation.

* See "Dictionary of Legal Terms."

† *Ib.*

‡ *Ib.*

Order of Precedence.

Order of
precedence of
Courts.

The following is the order of precedence of the various Tribunals and Courts:—

The **Court of Cassation** is the Supreme Court of Appeal for the entire country.

Then follow the several **Courts of Appeal**, of which there are 28 in France, and which rank equally amongst themselves.

Following the Courts of Appeal are ranked, firstly, the *Civil Tribunals of First Instance* and the *Tribunals of Commerce*.

In each Department of France there are as many Civil Tribunals of First Instance as there are *arrondissements de sous-préfecture**, with the exception of the Department of the Seine, which contains but one Civil Tribunal of First Instance.

Tribunals of
Commerce.

With respect to Tribunals of Commerce, *règlements d'administration publique*† determine their number and the places in which they should be established, to meet the requirements of trade and industry.

The district‡ over which each Tribunal of Commerce has jurisdiction is the same as that of the Civil Tribunal of First Instance situate in the same place.

Where there are several Tribunals of Commerce situate in the same district as a Civil Tribunal of First Instance, a separate zone of jurisdiction is assigned to each.

In districts in which no Tribunals of Commerce are established, the Civil Tribunals of First Instance adjudicate in mercantile actions. (See Arts. 615, 616, 640 and 641 of the Code of Commerce in the present treatise.)

Inferior Courts.

Two more Courts of inferior jurisdiction remain to complete our enumeration, viz., the *Justices of the Peace*, one in each *canton*§ of France; and the *Conseils de Prudhommes*, established in certain localities designated by *règlements d'administration publique*.

Each Tribunal confines itself to its special jurisdiction; thus, the Justices of the Peace decide in trivial and unimportant cases, the Tribunals of Commerce adjudicate in mer-

* See "Dictionary of Legal Terms." † *Ib.*

‡ *Arrondissement.* § See "Dictionary of Legal Terms."

cantile suits and bankruptcies, and the Civil Tribunals of First Instance in all cases other than those specially attributed to other Tribunals.

The *Courts of Appeal* revise judgments rendered in first instance by the Civil Tribunals and by the Tribunals of Commerce. Courts of Appeal.

The *Court of Cassation*, the Supreme Court of Appeal, annuls final judgments of the Tribunals and Courts below, when determined to be contrary to the text and spirit of the law.* Court of Cassation.

Of the various Degrees of Jurisdiction.

Two degrees of jurisdiction exist in relation to legal decisions in France. By this we mean that the same action can be successively submitted to two different Courts—firstly, to the Tribunal specially appointed to adjudicate thereupon, and secondly, to a superior Court, for revision in the event of one of the parties contesting the first decision. Two degrees of jurisdiction.

Certain cases, however, are confined to one degree of jurisdiction, and cannot be appealed against.† The Tribunals adjudicating in such cases are said to decide *en premier et en dernier ressort*, and as we have above explained, their judgments are absolutely final and conclusive. Meaning of "premier et dernier ressort."

If, on the contrary, the case is one involving two degrees of jurisdiction, the Tribunal instituted to adjudicate upon it in the first instance, decides *en premier ressort* only, subject to appeal to the superior Court.

Judgments of the Courts of Appeal are final and conclusive. They cannot be appealed against. It is true that recourse is admitted to the Court of Cassation, subject to the rules which will be found in another part of this treatise, but the Supreme Court does not constitute a *third* degree of jurisdiction, and appeals thereto do not suspend the execution of judgments given in the Courts of Appeal below. (See chapter on Court of Cassation.) Final judgments.

* Full details relating to the jurisdiction and practice in the various Tribunals referred to in this chapter will be found in the present treatise, under their respective headings.

† See references in Index.

CHAPTER II.

VARIOUS COURTS AND TRIBUNALS.

ORDER.

Justices of the Peace.
Tribunals of Commerce.
Conseils de Prudhommes.
Civil Tribunals of First Instance.
Courts of Appeal.
Courts of Cassation.

JUGES-DE-PAIX.

(Justices of the Peace).

Juges-de-paix. One justice of the peace is appointed in each *canton*.

The Tribunal consists of one judge, appointed and revocable by the chief of the State, and consequently *amovible*. He receives a salary and is not permitted to fill any other appointment.

In large towns the salary varies from 2,400 fs. to 5,000 fs. per annum; and in places of less importance, from 1,800 fs. to 2,300 fs. per annum.

In Paris there are as many *juges-de-paix* as there are *arrondissements*, viz., 20.

The *juges-de-paix* adjudicate without appeal in cases in which the amount in dispute does not exceed 100 fs. and subject to appeal up to any amount.

Appeals. Appeals lie to the Civil Tribunals of First Instance.

The jurisdiction of the *juges-de-paix* is exceptional, and is regulated by the Laws of 25th May, 1838, and 2nd May, 1855.

TRIBUNALS OF COMMERCE.

Tribunals of Commerce.

The history, organisation, jurisdiction and practice of the Tribunals of Commerce in France will be found fully discussed in the special chapters in this treatise, comprised under the above titles. (*See Index*).

CIVIL TRIBUNALS OF FIRST INSTANCE.

Civil Tribunals. A Civil Tribunal of First Instance is established in the chief town of each district, except in the department of the Seine, in which one Tribunal only exists for the whole department.

* See "Dictionary of French Legal Terms."

Each Tribunal is composed of from three to twelve judges, Judges. in addition to from three to six assistant judges, chosen from the practising *avocats* or *avoués* of the district.

Tribunals with three or four judges have but one *Chambre* or Court, those with from seven to ten have two Courts, those with 13 have three Courts. When more than one Court exists, one of them adjudicates upon correctional police cases.

In the enumeration of the judges the president is included, in addition to as many vice-presidents as there are *Chambres*, less one.

The *Chambre* in which the president sits has no vice-president. As an exception, in Paris, Lyons and Marseilles there are as many vice-presidents as there are *Chambres*. The president, vice-president and the judges are appointed by the chief of the State, and cannot be revoked. They are therefore termed *inamovibles*. *Chambres.*

To be elected judge, the candidate must be a French subject and a licentiate of laws. He must have practised as *avocat* in a Tribunal for the space of two years, and have attained the age of 25 years. Presidents and vice-presidents cannot be nominated under the age of 27 years.

The sittings and conduct of business are regulated by the law of April 11th, 1838, Art. 7. Conduct of business.

Judgments must be delivered by not less than three, and not more than six judges.

The *Ministère Public* must be present.

In Paris there are one president, 11 vice-presidents (corresponding with 11 *Chambres*) 62 judges, one *procureur* and 26 substitutes. Of the 11 *Chambres*, seven are civil, three correctional, and one mixed. (Law of April 30th, 1870.) Composition of Civil Tribunal in Paris.

In addition to the above, there exists a *Chambre* composed of three judges, taken from the other *Chambres*, who adjudicate in expropriation cases.

The Civil Tribunals of First Instance, called also *Tribunaux d'Arrondissement*, adjudicate generally in cases not specially attributed to other Courts, such as the *juges-de-paix*, Tribunals of Commerce and *Conseils de Prudhommes*.

Appeals from the justices of the peace lie to the Tribunals of First Instance.

Lastly, in places where no Tribunals of Commerce exist, the Civil Tribunals adjudicate in mercantile cases.

The Civil Tribunals of First Instance adjudicate finally and Appeals.

without appeal in cases where the amount in dispute is under 1,500 fs., or £60.

COURTS OF APPEAL.

Courts of Appeal. Appeals from final judgments, delivered by the Civil Tribunals of First Instance and from the Tribunals of Commerce, lie to the *Cours d'Appel*, of which there are 26 in France. Judgments of the Courts of Appeal are called *arrêts*.

Practice. Subject to few exceptions, the procedure in the Courts of Appeal is the same as that in the Tribunals of First Instance.

The cases are conducted by *avoués d'appel*, a special class of solicitors, who practise in the Courts of Appeal only. They are argued by *avocats*, called *avocats à la Cour d'Appel*, who also practise in the Tribunals of First Instance.

Judges. The judges of the Courts of Appeal and of the Court of Cassation are termed *conseillers*.

In Paris there are 72 *conseillers*, or judges of the Court of Appeal, including the presidents. There are also, in addition to the *procureur-général*, 7 *avocats-généraux* and 11 substitutes, 1 *greffier* and 12 *commis greffiers*. The Court of Appeal of Paris has seven *Chambres*.

THE PRACTICE ON APPEALS.

Time for appealing two months.

The time for appealing against judgments of the Tribunal of Commerce is, within two months as regards *jugements contradictoires** from the date of their notification to the party in person or at his domicil, and as regards judgments by default, from the date when *opposition*† against them could no longer be lodged.

These periods are peremptory, and run against all parties; but as regards non-emancipated minors, they only run from the date when the judgment was notified to the guardian of the minor, whether he had been made party to the suit or not.

Parties out of France,

Parties who reside out of France have further time within which to appeal beyond the two months above mentioned. The delays are as follows:—

England, &c.

1. Parties residing in Great Britain, Corsica, Italy, Holland, and the States surrounding France, *one month* from the *signification* (notification) of the judgment;
2. Those residing in other countries, either in Europe,

* For definition, see "Dictionary of Legal Terms."

† *Ib.*

on the coast of the Mediterranean, or the Black Sea,
two months;

3. Those residing out of Europe, beyond the Straits of Malacca and of the Sound, and beyond Cape Horn, *five months*; the above periods are doubled in case of maritime war.

Parties who are absent from France, or from Algiers, in the Exceptions. public service, and seamen abroad in their ships, are allowed eight months further time beyond the two years within which to lodge appeals.

The delays for appeal cease to run upon the death of the party condemned. The delays are not renewed until after notification of the judgment is served at the domicil of the deceased, accompanied by the formalities prescribed by Art. 61 of the Code of Civil Procedure, and dating from the expiration of the periods prescribed for drawing up the inventory if the notifications were made before the expiration thereof. Such notification can be addressed to the heirs collectively without specifying them individually.

In the event of judgment having been given upon a forged or false document, the time for appealing will be calculated from the date when the forgery was admitted or legally proved.

No appeal can be lodged against a judgment not *executory by provision* within eight days from the date thereof. (The object of this provision is to prevent parties appealing in hot blood.)

The execution of judgments which are not *executory by provision* is suspended during the said eight days.

Appeals against *jugements préparatoires* cannot be lodged until final judgment has been given. Such appeals must be lodged concurrently with appeals from final judgments, and the time for appealing will run only from the date of the *signification* of such final judgments. Appeals against *jugements préparatoires* can be lodged, notwithstanding that such judgments may have been executed without reserve.

Appeals from *jugements interlocutoires* cannot be lodged until final judgment has been given.

Jugements préparatoires are judgments rendered during the proceedings in the action, and for the purpose of preparing the case for final judgment.

Jugements interlocutoires are judgments rendered in reference to preliminary matters — such as evidence, valuations, *Jugements préparatoires*,
meaning of.

*Jugements
interlocutoires,
meaning of.*

verifications, and other facts necessary to enable the Tribunal to deliver final judgment upon the merits of the case.

*Stay of
execution.*

The writ of appeal must be served personally, or left at the residence of the opponent, or it will be void.

Appeals from final or interlocutory judgments stay execution, unless such judgments order provisional execution in cases where such provisional execution is permitted.

THE COURT OF CASSATION.

*Court of
Cassation is
Supreme Court
of Appeal.*

The Court of Cassation is the Supreme Court of Appeal in France.

Divisions.

It is composed of forty-nine members or judges, including a first president and three presidents.

It is divided into three sections—1. The *Chambre des Requêtes*; 2. The *Chambre Civile*; 3. The *Chambre Criminelle*.*

Certain decisions must be delivered by the three chambers sitting together, *en séance solennelle*.

Judges.

Each chamber is composed of a president and of fifteen *conseillers* or judges. The *premier* president presides in any one of the various chambers when he deems it requisite.

Eleven judges at least in each chamber are required to deliver a judgment or *arrêt*, and thirty-four when they sit *en séance solennelle*.

*Procureur-
général.*

A *procureur-général* and six *avocats-généraux* are attached to the Court of Cassation.

The *procureur-général*, or one of the *avocats-généraux* in his name, appears in all the cases on behalf of the Government.

Avocats.

Avocats appointed by the Chief of the State fulfil the duties attributed to *avoués* in the ordinary Tribunals. Their functions are twofold. They both prepare and argue cases entrusted to them. In a word, they combine the duties of solicitor and counsel.

*What appeals
lie to Court of
Cassation.*

Appeals lie to the Court of Cassation from *arrêts* or judgments of the Courts of Appeal (*Cours d'Appel*), and from final judgments (*jugements en dernier ressort*) given by Tribunals of First Instance, or by the Tribunals of Commerce.

Judgments *en premier ressort* cannot be submitted to the Court of Cassation.

*Court decides
upon questions
of law only.*

The Court of Cassation adjudicates *inter alia* in cases relating to jurisdiction, excess of powers, and violation of the forms of procedure of the Courts below. It decides upon *questions of law* only.

* See "Dictionary of French Legal Terms."

Appeals upon questions of fact are under no circumstances adjudicated upon by the Supreme Court.

PRACTICE.

Appeals called *pourvois en cassation* are commenced, not by *assignation* or writ, but by the presentation of a *mémoire* in the form of a petition. Practice.

This *mémoire* must be signed by one of the *avocats* attached to the Supreme Court, and filed in the *greffe*, and the case is thus brought before the *Chambre des Requêtes* (Chamber of Petitions). All appeals must pass through the *Chambre des Requêtes* before being admitted to the *Chambre Civile*.*

The time for appealing to the Court of Cassation is within two months from the date of the notification of the decision appealed against to the party in person or at his domicil. Time for appealing.

The time for appearance is within one month from the service of the notice of admission, of the appeal upon the defendants personally or at their domiciles. Appearance.

The time is extended to eight months for parties absent from France or Algiers in the public service, and for the same period for seamen absent on sea voyages. Extension of time in certain cases.

One month's further time is allowed when the plaintiff is domiciled in the British Isles, Algeria, Corsica, Italy and the countries bordering on France, and two months if domiciled in the other European States, on the coast of the Mediterranean and of the Black Sea.

Five months must be added for places within the Straits of Malacca and Cape Horn, and eight months for places beyond these distances.

The above periods are doubled for foreign parts in the event of maritime war. The same extensions of time are also granted to a plaintiff for service of the *arrêt d'admission* in any of the above countries.

When the time for appearance has expired without the defendant being represented before the Court, the case will be proceeded with upon a certificate being lodged by the *greffier* setting forth that the defendant has not entered an appearance.

Appeals to the Court of Cassation do not operate as a stay of execution or of proceedings in relation to the judgment appealed against. The Court of Cassation cannot stay execution of judgment or decisions of the Courts below, even upon No stay of execution.

* See further as to practice, "Dictionary of Legal Terms," under title, "*Chambre des Requêtes*."

evidence that the prejudice arising from execution being issued would be irreparable.

Effect of judgment of Court of Cassation.

It has already been stated that the Court of Cassation decides upon questions of *law* only. The object of appeals in Cassation is not, as in the Courts of Appeal, to substitute a correct for an erroneous judgment, but simply to quash the judgment appealed against, in order that the parties may be in the same relative positions as they were before the judgment appealed against was given.

Thus, if the appellant succeeds in Cassation, the judgment of the Court below is simply annulled, but no fresh judgment is delivered in his favour in substitution.

The parties are then referred back, for the settlement of their differences, to a Tribunal of the same rank as that by which the judgment appealed against was rendered.

Such latter Tribunal is not bound by the decision of the Court of Cassation. It can again decide the case in the terms of the previous decision of the Court below. In this event the further appeal, if prosecuted, is carried before the three united *Chambres* of the Court of Cassation, and should the judgment be quashed a second time, the case is sent back to be reheard before a third Tribunal, which has not the same liberty of decision as the second, and which must render judgment upon questions of *law* in conformity with the *arrêt* of the Supreme Court.

CHAPTER III.

Description of the various Legal Officials.

The Judges.

The *Ministère Public*.

The French Bar (*Avocats*).

Avoués } Solicitors.
Agréés }

Notaries.

Huissiers.

Greffiers.

Commissaires-Priseurs.*

THE JUDGES.

The members of the Civil Tribunals of First Instance, of the Tribunals of Commerce, and of the Justices of the Peace, are called *juges*.

* See "Dictionary of French Legal Terms."

The Judges of the Courts of Appeal and of the Court of Cassation are denominated *conseillers*. (See chapter upon the various Courts and Tribunals for further information.)

OF THE MINISTÈRE PUBLIC.

(*Procureurs-Généraux*.)

(*Avocats-Généraux*.)

The *Ministère Public* is an official appointed to sit in each Court to represent public order and interest, and to watch over the proper application of the laws.

The duties of the *Ministère Public* are fulfilled in the Court of Cassation by a *procureur-général* and six *avocats-généraux*.

The Courts of Appeal retain one *procureur-général*, and as many *avocats-généraux* as there are civil chambers in each Court, to which is added one for the Chamber of Appeals in *Police Correctionnelle* cases.

The Civil Tribunal of First Instance employ a *procureur de la République*, and one or more substitutes.

No *Ministère Public* is attached to the Tribunals of Commerce or to the Justices of the Peace. The *Ministère Public* is the representative of the law and of the public, and he has the three following duties to fulfil:—

1. To see that the law is respected in Courts of Justice, and to cause their decisions to be carried into effect.
2. To submit applications to the Courts in the public interest, and to contest those contrary thereto. (See Arts. 190, 191, 192, and 491 of the Civil Code.)
3. To give his opinion in the public interest in relation to cases which, although pending between private individuals, affect the public in any particular.

THE FRENCH BAR.

Avocats.

The term *avocat* is applied to persons who, after having gone through a course of study in the public schools in France, and obtained the diploma of licentiate in laws, and taken the necessary oaths, devote themselves to representing litigants and others in the Tribunals, and to advising them in relation to matters appertaining to the Courts of Law.

In principle, *avocats* have alone the privilege of pleading Privileges. for the parties, but *avoués* or solicitors are, under certain

The French
Bar—*avocats*
(barristers).

circumstances, admitted to the exercise of this right; thus, *avoués* are admitted to plead—

1. When the number of *avocats* attached to a Tribunal is admitted by a Court of Appeal to be insufficient.
2. In the event of the absence of the *avocat*, or of his refusal to appear.

Avoués have also the right to argue in summary and interlocutory proceedings.

Litigants are not compelled to employ *avocats*, and the latter are not compelled to act if retained by litigants. Litigants have the right to defend themselves with the assistance of an *avoué*: but the Court has power to silence parties appearing in person who are carried away by passion, or who are unable, through inexperience or incapacity, to conduct their cases with the decency and clearness necessary for the elucidation of the cause.

Criminal cases. In criminal cases in the Courts of Assize, prisoners are allowed to defend themselves, or can be defended by one of their relatives or friends, with the permission of the president.

An *avocat* deputed by a Criminal Court to defend a prisoner cannot refuse to do so unless the excuse tendered by him be approved by the President of the Court of Assize. Should he persist in his refusal after being ordered to plead, he will incur the penalties prescribed by Article 18 of the *Ordonnance* of 20th November, 1822.*

Avoué can conduct case in absence of avocat.

In case of the absence or refusal of an *avocat* to attend, *avoués*, both in the Courts of Appeals and Civil Tribunals of First Instance can be authorised by the Court to argue cases on behalf of their clients.

Illness.

An *avocat* who, through illness, is unable to appear on the hearing of a cause, is required to forward a written notice thereof to the president previously, and thereupon the *avoué* may be permitted to plead the case, or an adjournment may be ordered.

Engaged elsewhere.

A similar rule prevails when the *avocat* is engaged in another case in one of the chambers of the same Tribunal sitting at the same time.

Liabilities of *avocats* for negligence.

Apart from the two above-mentioned cases, if an *avocat* is absent when a case is called on, and it is struck out through his default, he can be personally condemned in the costs of

* See "*Peines de Discipline*," p. 13.

the adjournment, and in damages for the loss accruing to the parties through the delay, if any.

No *avocat* can be inscribed upon the list of *avocats* of a Court or Tribunal, unless he actually practices therein.

The list or *tableau* is reprinted at the commencement of each judicial year, and filed in the offices of the Court or Tribunal to which such *avocats* are attached. *Tableau of barristers.*

Of the Council of Discipline.

The *batonnier* is the chief of the bar, and presides in the council of discipline. Council of discipline.

The following are the attributions of the councils of discipline:—

1. To decide questions relating to the inscription of *avocats* upon the *tableau*.
2. To exercise the surveillance requisite to maintain the standing of the profession.
3. To apply, when necessary, the measures of discipline authorised by the prescribed regulations.

Councils of discipline, upon complaints being submitted to them, deal *ex officio* with offences and breaches of the rules committed by *avocats* inscribed in the *tableau*. But the Tribunals are not precluded from taking cognizance of offences committed by *avocats* when appearing before them.

The *Ministère Public* and aggrieved parties are in like manner free to institute proceedings against *avocats* in the Courts in relation to crimes and misdemeanours committed by them.* *Proceedings against avocats.*

The *peines de discipline* are as follows:—

Punishments.

CAUTION.

REPRIMAND.

TEMPORARY SUSPENSION.

STRIKING OFF THE ROLL.

The above measures cannot be applied until the explanation of the accused *avocat* be heard, after service of notice upon him to furnish the same within eight days. Accused may be heard.

All decisions of the council of discipline ordering suspension or striking off the roll must be transmitted within three days to the *procureur-général*, who is charged to see them carried into execution. Striking off roll.

The condemned *avocat* can appeal against such decisions to Accused may appeal.

* See the unrepealed Articles of the Ordonnance of the 20th November, 1822, relating to the exercise of the profession of *avocats* and of the discipline of the bar.

the Court of Appeal of the district. The *procureur-général* has also the right to appeal in reference thereto. Such appeals must be lodged within 10 days of the notice delivered by the *batonnier* of the decision of the council of discipline.

Punishment
may be
increased.

The Courts of Appeal, upon the hearing of an appeal by an aggrieved *avocat*, may further increase the penalty pronounced against him by the council of discipline, notwithstanding that the *procureur-général* may not have appealed against it as being insufficient.

An *avocat* having incurred the penalties of reprimand or suspension, shall be placed at the bottom of the list in which his name appeared.

General Provisions and Customs relating to *Avocats*.

Call to the bar

Before being called to the bar, *avocats* must undergo a "stage," or keep terms for the space of three years.

Rules and
regulations.

Retired *avoués* or solicitors, licentiates of laws, can be called to the bar after being admitted to serve their "stage."

Avocats cannot practice as *avoués*, notaries, or *greffiers*; they must not accept employment remunerated by salary, nor act as agents, or engage in any species of trade.

Curious
customs.

It is not customary to employ more than one *avocat* to conduct a case, as in England.

Avocats are permitted to receive instructions direct from their clients as well as from *avoués*. Their fees are payable to them direct without the intervention of their clerks.

There are no "Inns of Court" in Paris. *Avocats* do not congregate in certain neighbourhoods, as in Lincoln's Inn and the Temple in London. They receive their clients at their residences. They do not transact business in chambers apart from their residences.

Counsels' fees.

Counsels' fees are not recoverable against the losing party in a suit, but must be borne by the client in any event.

Large incomes
rare.

The enormous incomes commonly earned by counsel in England are unknown in France; and litigation in the latter country, if not much more expeditious, is in any case infinitely less costly than in England.

Costume.

Barristers in France do not wear wigs, nor any covering to the head, when addressing the Courts. They, however, appear before them in black silk gowns. The corresponding distinction between "Queen's counsel" and "juniors" does not exist in France.

Avocats cannot sue for recovery of their fees.

AVOUÉS (SOLICITORS).

Avoués are legal officials appointed to represent the parties *Avoués* in the Civil Tribunals of First Instance, and in the Courts of Appeal.

Avoués must not be confounded with *agréés*, who practise *Agréés* exclusively in the Tribunals of Commerce. The duties of both correspond, in a measure, with those of solicitors in England.

One inconvenience attending the French system is, that the same solicitor cannot represent his client in all the Courts, as in England. An *agréé* must be employed in the Tribunal of Commerce. An *avoué de première instance* must be instructed in the Civil Tribunals of First Instance. *Avoués d'appel* have the exclusive right of conducting cases in the Courts of Appeal. And lastly, *avocats de cassation* practise solely in the Court of Cassation * and the *Conseil d'Etat*. Inconvenience of French system.

Avoués are compelled to give their services when called upon, and litigants and other parties requiring to proceed in the Tribunals and Courts, are, on the other hand, obliged to be represented by *avoués*. Parties cannot sue in person.

There are *avoués* practising in the Civil Tribunal of First Instance in Paris, and *avoués* specially attached to the Court of Appeal. Two categories of *avoués*.

The above enjoy the monopoly of the business in these Courts respectively.

Their number is limited. The vacancies which arise by death or retirement are filled up by purchase from qualified aspirants waiting for the opportunity to establish themselves as their successors. Number limited.

Students, having passed the necessary examinations, cannot start in business in Paris independently on their own account, They must wait until an existing practice becomes vacant, and be provided with the capital necessary for its purchase if approved. Custom in Paris.

Under the above system, the competition for business in the capital naturally is not keen, and the whole of the *avoués* earn good incomes. Competition.

Partnerships between *avoués* are forbidden in France.

Avoués and *agréés* do not undertake the preparation of wills, Partnerships unknown in France.

* See the chapter on the "Court of Cassation."

settlements, and conveyancing business. This branch of the profession comes solely within the province of notaries.

(*Solicitors practising exclusively in the Tribunals of Commerce.*)

AGRÉÉS.

Agréés.

Certain practitioners are attached to most Tribunals of Commerce, called *agréés près du Tribunal de Commerce*, and these officials, by custom, exercise a monopoly of the practice in these Courts, but the parties can appear in person or by an *avocat*, an *avoué*, a *huissier*, or other agent, if they think fit.

Special procuration requisite to enable *agréés* to appear.

Whoever appears on behalf of a litigant must prove his authority by exhibiting a special procuration, or *pouvoir*, duly signed and legalised, but *agréés* are, by special favour of the Tribunal (at least of the Tribunal of Commerce of the Seine), dispensed from obtaining the legalisation of their client's signatures to the *pouvoirs*. A form of the necessary procuration, with translation annexed, will be found in the present work.

Number of *agréés*.

At Paris there are 15 *agréés*. Previous to 1809 the number was 21, and we think it could be advantageously increased at the present time. These 15 practitioners possess the monopoly of the mercantile legal business of the whole of Paris and of the Department of the Seine. As a result, they are mostly overburdened with work, and the interests of litigants suffer.

Faulty system.

Agréés are appointed upon the presentation of a former member, after approval by the *Chambre* and of a commission composed of its members.

They are sworn in before the Tribunal, in the council chamber, to faithfully fulfil their functions with honour and probity, and to conform with the rules and regulations of the Court.

Costume.

In Paris, *agréés* are robed in black gowns, but wear no wigs.

Professional secrecy.

Agréés are bound to professional secrecy, and like *avoués* and *avocats*, cannot be compelled in a Court of law to divulge matters confided to them in the practice of their profession.

Agréés are required to attend at the opening of the Tribunal, and to be present so long as their cases are not disposed of. They are urged to refrain as much as possible from handing over their cases to other *agréés*. Should they do so, they are enjoined to give them the fullest instructions.

Costs.

Costs.

In Paris the scale of fees payable to *agréés* has been fixed

by various *arrêtés*, the most recent bearing date 29th of June, 1839. These regulated charges are very low, but in practice are augmented by an honorarium, charged by and presented to the *agréé* by the client in most cases.

The above fees are recoverable from the losing party.

Actions by *agréés* for payment of their fees can be brought either in the Tribunals of Commerce or the Civil Tribunals, according to the circumstances; but such claims are rare, as *agréés* almost invariably obtain a sufficient advance from their clients at the outset of the action to cover the entire costs. The system of credit customary in England is quite unknown in France, and the cost of litigation infinitely less.

Actions for negligence against *agréés* must be brought in the Civil Courts. Actions for negligence.

Huissiers.

Huissiers are *officiers ministériels* attached to the Tribunals to effect legal service of process required by law in actions and suits, and to issue executions upon judgments and other *actes exécutoires*. *Huissiers*.

Huissiers are either ordinary or *audienciers*. The latter correspond somewhat with ushers in the English Courts. Their duties are to keep order, and to serve to pass communications between counsel or the parties with the judges and *greffiers*.

Huissiers are compelled to act professionally when applied to, and parties are compelled to have recourse to them in relation to acts coming within their province.

Greffiers.

Greffiers are officials attached to the Courts to assist the judges in their duties. They write out the judgments, orders, and other decisions given by the Tribunals, and deliver copies thereof to applicants upon payment of the regulated charges. *Greffiers*.

Notaries.

Notaries are public officials appointed to draw up deeds and contracts, to which the parties are obliged, or desire to give the characteristics attached to documents of public authority, and to which they desire to obtain a fixed and certain legal date. Such documents are termed *actes authentiques*. Notaries.

Notaries are appointed for life, and are compelled to give their services upon application. Appointed for life.

They are forbidden to practice beyond the district allotted to them.

Rules and regulations.

The duties of notaries are incompatible with those of other professions, such as judges, *greffiers*, *avoués*, *huissiers*, *juges-de-paix*, *commissaires de police*, and certain other functionaries, and they cannot exercise as such.

Notaries are forbidden to draw up deeds to which their relations are parties.

Effect of notarial deeds.

Notarial deeds have the same legal force and effect as judgments, and are executory throughout France, unless contested upon the ground of forgery.

Notarial copies of deeds for execution are delivered by notaries in the *executory form*, and are intituled and framed in the same terms as judgments of the Tribunals. (See the *décret* of 2nd December, 1852, and the *décret* of 2nd September, 1871.)

Notarial seals.

Each notary must possess a seal bearing his name, profession and address, and a design representing the *République Française*, and copies of deeds delivered by him must be sealed therewith.

Number of notaries.

The number of notaries for each department, together with the amount of security required to be deposited by them, are fixed by the Government.

No person under the age of 25 years can be appointed to the office of a notary.

Notaries are governed by a chamber of discipline.

Notaries must not speculate, etc.

Notaries are forbidden to connect themselves with any mercantile, financial, or industrial Company, partnership, or scheme, to speculate in the sale or purchase of land, to buy up claims, successions, or any similar rights, to interest themselves in any undertaking in relation to which they are called upon to act professionally, to invest moneys entrusted to them in their own name, even upon condition of paying interest upon it, to become surety or guarantee under any circumstances in respect of loans granted through their agency, or in relation to which they may have prepared the deeds, to make use of fictitious names under any circumstances even in respect to deeds other than those above mentioned.

Severe penalties.

The foregoing provisions must be obeyed under severe penalties. (See the Law of 4th January, 1843, Arts. 12 *et seq.*)

There are 123 practising notaries in Paris.

Duties of notaries in France.

Notaries also draw up wills, settlements, and other deeds; they administer the estates of deceased persons, and effect

sales of real and personal property by public auction or private contract, except when such sales, as regards realty, are ordered to take place pursuant to an order of the Court. In the latter case the sales are conducted by *avoués* in the Civil Tribunals.

CHAPTER IV.

Description of Tribunals of Commerce, and Practice therein.

Procedure in Tribunals of Commerce.

Tribunals of Commerce were established with the object of submitting commercial disputes to the adjudication of traders conversant with mercantile usages and customs, and to provide a more speedy procedure in commercial actions than the practice followed in the ordinary Tribunals.

Tribunals of Commerce in France date from the French Revolution, and their constitution and powers were determined by Title 12 of the Law of 16-24th August, 1790, and confirmed in 1807.

OF THE ORGANISATION OF THE TRIBUNALS OF COMMERCE.

The number of Tribunals of Commerce, and the towns in which they sit, are decided by a **règlement d'administration publique**, according to the extent of the commerce and industry of such towns.

Regulations as to number and location of Tribunals of Commerce.

The district of each Tribunal of Commerce is the same as that of the **Tribunal Civil** in which jurisdiction it is situated. If there are several Tribunals of Commerce in the jurisdiction of a single **Tribunal Civil**, each of them is assigned special districts.

Each Tribunal of Commerce is composed of a presiding judge and of deputy judges. The number of judges cannot be less than two, nor more than 14, not including the president. The number of deputy-judges is proportioned to the requirements of the business.

Judges and deputy-judges.

A **règlement d'administration publique** fixes the number of judges and of deputy-judges in each Tribunal.

How appointed.

The members of the Tribunals of Commerce are elected by

a meeting of electors chosen from well-known traders recommended by their probity, their reputation for order and economy. Directors of limited Companies, of financial and industrial enterprises, stockbrokers, captains of vessels undertaking long voyages, and captains of coasting vessels who have actually commanded vessels during five years, and been domiciled for two years last past in the district of the Tribunal, may be admitted to such meetings.

Electors

The number of electors comprises one-tenth of the traders inscribed upon the list of taxpayers.

They cannot exceed 1,000 nor be less than 50. In the district of the Seine the number is at least 3,000.

The list of electors is drawn up by a commission composed as follows :—

1. Of the president of the Tribunal of Commerce, who presides, and of a judge of the Tribunal of Commerce. At the first election following the establishment of a Tribunal, the President of the **Tribunal Civil**, and a judge of the same Tribunal, take part in the commission.

2. Of the president and of a member of the Chamber of Commerce. If the president of the Chamber of Commerce is at the same time president of the Tribunal, another member is called upon. In towns in which no Chamber of Commerce exists, the president and a member of the **Chambre Consultative des Arts et Métiers** are admitted.

In default of such, a **conseiller municipal** is chosen.

3. Of three **conseillers généraux**, chosen, as far as is possible, from among the members elected in the **canton** of the jurisdiction of the Tribunal.

4. Of the president of the **Conseil des Prudhommes**, and if there are several, the oldest of the Presidents. In default of the **Conseil des Prudhommes**, the **juge-de-paix**, or the senior of the **juges-de-paix** of the town in which the Tribunal sits.

5. Of the mayor of the town in which the Tribunal sits, and at Paris the president of the **Conseil Municipal**.

The judges of the Tribunal of Commerce, the members of the Chamber of Commerce, the **judge of the Tribunal Civil**, the **conseillers généraux**, and the **conseillers municipaux**, in the cases provided by the preceding paragraph, are elected by the bodies to which they belong.

Vacancies.

Each year a commission fills up the vacancies arising from

decease or legal incapacity arising subsequent to the last revision. The commission adds to the list, in addition to the number of electors fixed by Art. 619, the former members of the Chamber and Tribunal of Commerce, and the former members of the **Conseil des Prudhommes**.

The following parties cannot be inserted on the list, nor take part in the election, even if they are called upon, viz.:—

Disabilities as regard electors.

1. Individuals condemned to certain punishments, viz., criminal penalties pronounced by juries, or punishments inflicted by **Tribunaux Correctionnels**, either for acts declared to be crimes by law, or for theft, swindling, abuse of confidence, usury, indecent assaults, or smuggling, when the conviction for the last-mentioned misdemeanour has been at least one month's imprisonment.

2. All individuals condemned for the infringement of the laws relating to gambling, lotteries and establishments lending money upon security.

3. Individuals condemned for misdemeanours provided for by Arts. 413, 414, 419, 420, 421, 423, and 430, paragraph 2 of the Penal Code, and Arts. 596 and 597 of the Code of Commerce.

4. Public officials who have been dismissed from their functions.

5. Undischarged bankrupts, and generally all persons who are prevented from voting at legal elections.

The list is sent to the **préfet**, who has it published and advertised. A copy signed by the president of the Tribunal of Commerce is deposited at the **greffe** of the Tribunal of Commerce.

Any licensed trader of the district has access to the same, and the right at all times to demand the removal of electors who are comprised in any of the cases of incompetence above mentioned. Such action is brought without expense in Civil Courts, and the chamber of the council pronounces its decision relating thereto. Should there be an appeal, the Court of Appeal gives its decision in the same form.

Any trader, director of a limited Company, stockbroker, captain of a vessel undertaking long voyages, and master of a coasting vessel, inscribed upon the list of electors, or holding the position required to be so inscribed, can be appointed judge or deputy-judge if he is thirty years old, if he is inscribed upon the list of licensed traders for five years, and

Qualifications for election as judge.

domiciled at the time of the election within the jurisdiction of the Tribunal.

Former traders and stockbrokers can be elected, if they have carried on their business for the same period.

No person can be named judge unless he has been a deputy-judge.

The president can be elected from amongst the former judges only.

Ballot.

The election of judges and deputy-judges takes place by ballot all together, on a single list, and by special ballot as regards the president.

In the event of it being necessary to elect a president, the special object of such election is pronounced before proceeding to ballot.

The elections take place in the town in which the Tribunal of Commerce is situated, under the presidency of the mayor of the chief town or place in which the Tribunal is situated, assisted by four tellers, who must be two of the youngest and two of the oldest electors present.

The electors must be convened within the first fifteen days of December by the **préfet** of the district.

Mode of
operation

At the first turn of the ballot, no person is elected if he has not secured over one-half of the suffrages, and a number equal to one-fourth of the number of the electors inscribed upon the list.

At the second ballot, which takes place eight days afterwards, a relative majority is sufficient.

The duration of each ballot is two hours at least.

The report is drawn up in triplicate, and the President sends one copy to the **préfet**, and another to the **procureur-général**; the third is deposited at the **greffe** of the Tribunal.

Any elector can, within five days after the election, contest the same before the Court of Appeal, which decides summarily and free of expense to the parties.

The **procureur-général** has ten days within which he demands to have the election declared void.

Periods of
service.

At the first election the president, and half the judges and deputy-judges of which the Tribunal is composed, are elected for two years. The second half of the judges and of the deputy-judges are elected for one year.

At the subsequent elections all nominations are for two years.

All the members included in one single election are sub-
mitted simultaneously to periodical re-election, although one
or more may not have exercised his or their functions during
the legal period in consequence of delay in their appoint-
ments.

Re-election.

The president and the judges retiring from their functions
after two years can be re-elected immediately for two further
years. After this further period they cannot be re-elected
until after the expiration of another year.

Retiring judges.

Any member elected in the place of another, consequent
upon death or any other cause, can only remain in office for
the period remaining to be served by his predecessor.

A **greffier** and a **huissier** appointed by Government are
attached to each Tribunal. Their rights, attendances, and
duties are fixed by a **règlement d'administration
publique**.

Gardes de commerce were appointed for the city of
Paris only, for the execution of judgments involving arrests.
The form of their organisation and their duties is fixed by
special regulations. (This Article is repealed by the law
abolishing the **contrainte par corps**.)

Judgments in the Tribunal of Commerce must be given
by three judges at least. No deputy-judge can be called upon,
except to complete such number.

Avoués are not admitted before the Tribunals of Com-
merce, pursuant to Art. 414 of the Code of **Procédure
Civile**.

Avoués cannot
practice in
Tribunals of
Commerce.

No person can plead for any party before these Tribunals,
unless authorised by the party himself being present at the
hearing, or unless provided with a special power of attorney.
This power, which can be given at the foot of the original copy
writ, must be handed to the **greffier** before the case is called
on, and must be countersigned by him free of expense.

Power of attor-
ney necessary.

In cases before the Tribunal of Commerce, no **huissier** can
take part therein as counsel, nor represent the parties by
power of attorney, under penalty of a fine of from 25 francs to
50 francs, which is pronounced without appeal by the Tribunal,
and without prejudice to the penalties to which **huissiers**
are subject. These provisions do not apply to **huissiers** who
are in the positions provided by Art. 86 of the Code of Civil
Procedure.

The functions of the judges in the Tribunal of Commerce
are honorary.

Judges are
honorary.

Must take
oaths upon
appointment.

They must take the oaths before entering upon their duties before the Court of Appeal, when such Court sits in the district in which the Tribunal of Commerce is established; but in the ordinary case the Court of Appeal can order, if the judges of the Tribunal of Commerce demand it, that the oaths be received by the **Tribunal Civil** of the district, and in this case the Tribunal draws up a report and sends it to the Court of Appeal, which orders it to be inscribed upon its registers. These formalities are complied with, on the application of the **Ministère Publique**, and without expense.

The Tribunals of Commerce are subject to the jurisdiction and the control of the Minister of Justice.

JURISDICTION OF THE TRIBUNALS OF COMMERCE.*

Jurisdiction of
Tribunals of
Commerce.

Tribunals of Commerce adjudicate in the following cases, viz.—

1. Disputes relative to engagements and transactions between merchants and bankers.

* The subject of the jurisdiction of these Courts divides itself—

1. According to the matter or persons against whom it is directed, or over whom it may be exercised;
2. According to the district within which it may be exercised.

There is a further division to be made, according as the judgment of the Court is—(1) open to appeal; (2) final.

Bearing in mind that the jurisdiction of these Courts is exceptional, and that they possess solely the right to judge a case, but not to issue process for the execution of their judgments—this being a matter for the Civil Court—the Tribunals of Commerce are on a footing analogous to the Courts of experts, of arbitrators, or the consular Courts.

In any district where there is no Tribunal of Commerce, the jurisdiction belongs entirely to the Civil Court, and the judges of that Court exercise all the functions elsewhere belonging to the Tribunal of Commerce. The procedure in such cases, and the effect of judgments pronounced, are the same as when a cause is brought before the Tribunal of Commerce.

Special duties, besides the power to decide causes, which are assigned to the Tribunals of Commerce, are:—

To choose the jury which presents to the Government the candidates for vacancies among the stockbrokers;

To assist in the drawing up of rules for *bourses de commerce*;

To authorise, in special cases, the sale of new goods;

To order *saisies conservatoires* ;*

To manage and control proceedings in bankruptcy.

These extra-judicial duties are performed, according to circumstances, either by the whole Tribunal, by its president, or by an assistant-judge.

* Attachments. (See "Dictionary of Legal Terms.")

2. Disputes between partners in relation to trading enterprises.
3. Disputes relating to acts of commerce between all persons.

The law considers the following as acts of commerce, viz :—

Any purchase of produce and merchandise for the purpose of resale, either in kind, or after having been worked, or even the letting out on hire of the same.

1.—Jurisdiction derived from the subject-matter in dispute, or from the status of the parties.

The Tribunal of Commerce decides :—

1. Disputes with reference to all commercial business and matters relating to trade between all persons ;
2. Disputes between traders, merchants and bankers relative to their business undertakings and agreements ;
3. Suits against the widows or heirs of persons amenable to their jurisdiction ;
4. Demands for payment of negotiable instruments signed by receivers, paymasters, collectors, or other public government accountants ;
5. All actions arising on negotiable instruments, provided the origin of these instruments is some business transaction ;
6. Actions against factors or clerks of traders, or their servants, for business transacted on behalf of their principals ;
7. Nearly all disputes in bankruptcy.

The jurisdiction is strictly limited to those matters assigned by law to the Tribunal, and cannot by any device be extended to matters which involve questions belonging to the Civil Courts, such as status, real property, or even personal property not connected with commercial operations, &c.

Example : If a trader lends a horse or lets it on hire to a man in business, and the goods of the latter are seized, the lender cannot bring his claim before the Tribunal of Commerce.

Obligations arising from *quasi-delicto*, when derived from commercial transactions, are within the jurisdiction of the Tribunal of Commerce ; for instance, a claim for damages caused by an accident between two vehicles owned and used by carriers for the purposes of their business.

"Acts of Commerce" form the subject-matter of the jurisdiction of these Courts. Various enumerations of them have been made in the law, *e.g.* :—

1. The purchase of merchandise for the purpose of re-sale or letting out on hire.
2. Any manufacturing enterprise, matter of commission, or carriage by land or water.
3. Any undertaking to supply goods, agencies, public auctions, &c.
4. All operations of exchange or banking.

- Any enterprise of manufacture, commission, or carriage by land or by water.
- Any enterprise or undertaking to supply goods, agencies, commission agencies, establishments for sales by auction, and public amusements.
- All operations relating to exchange, banking, and commission.
- All operations of public banks.
- All obligations between traders, merchants, and bankers, and transactions in relation to bills of exchange, and the remittance of money from one place to another, as regards all persons.

- 5. Bills of exchange and all methods for the transfer of money from one place to another.
- 6. All matters of sale connected with ships, their stores, and tackling; freight, bottomry, and respondentia bonds, maritime insurance, hiring and wages of seamen on mercantile vessels.

Parties.

When both parties are traders, and the dispute arises in reference to a business transaction, the Court has power over them; but if the matter in dispute between traders did not arise in the course of business dealings, there is no jurisdiction.

If one party is a trader and the other a non-trader, and the subject-matter in dispute is a business transaction, the rule is as follows:—

The non-trader may sue the trader before the Tribunal of Commerce.

The trader cannot sue the non-trader except in the Civil Court.

It follows that the non-trader may choose either the Civil Court or the Tribunal of Commerce in which to bring his action.

It is the duty, *ex officio*, of the judge in the Tribunal of Commerce to decline jurisdiction in civil matters.

It is not the duty, *ex officio*, of a Civil Court to decline jurisdiction in commercial matters, except in bankruptcy proceedings. The defendant is left to plead to the jurisdiction, and if he appears without so pleading or protesting, the Civil Court can decide the case, and this plea cannot be raised on appeal.

The two essential points to give jurisdiction to the Tribunal of Commerce being (1), parties engaged in trade (2), acts relating to trade, it follows that a trader can plead to the jurisdiction by showing that the transaction in dispute is not a matter relating to trade. The proof required of him is strict in this respect; but if satisfactory, the plaintiff will be left to his remedy before the Civil Court.

When the two essential conditions to the jurisdiction of the Court are established, the widow or heir of a deceased trader cannot plead to the jurisdiction, whether the action is begun against them in the first instance, or whether it has been already brought against the trader who has deceased during its continuance.

The ground of the jurisdiction over clerks or factors of traders is the

Any undertaking for the building, and all purchase, sales, and resales of ships for home and foreign navigation, "Acts of commerce."

All maritime transport.

All sales or purchases of stores and rigging for ships.

All freight, bottomry and respondentia.

All assurance and other contracts concerning seafaring transactions.

All agreements and arrangements in relation to wages and the hire of ships.

All engagements of crews for the service of mercantile vessels.

fact that proceedings in the Tribunal of Commerce are less expensive and more expeditious than in other Courts.

Actions for negligence whereby the principal has incurred loss are within the jurisdiction of the Tribunal of Commerce.

Actions for salary due to clerks, &c., may be brought before the same Tribunal; but as the contract of service is purely civil, the person employed has the option of proceeding in the Civil Court.

Disputes between masters and apprentices are decided by the Court of experts, or the justice of the peace where there is no Court of experts.

2.—Territorial Jurisdiction.

Each Tribunal of Commerce exercises its functions within a prescribed district.

With regard to this division, there is a difference as regards the *ex officio* duty of the Courts. We have already seen that the Tribunal of Commerce must decline jurisdiction *ex officio* if the subject-matter or the parties are not commercial. There is no such duty imposed on them when the defendant is cited to appear within their jurisdiction; it rests with him to plead the defence that he has been summoned in the wrong district, and he cannot avail himself of it, in spite of the irregularity, unless he specially pleads it.

In commercial suits the plaintiff may sue the defendant :—

1. In the district of the domicile of the defendant;
2. Before the Court within whose jurisdiction the contract was made and the goods delivered;
3. Before the Court within whose jurisdiction the payment was to be made.

This rule is absolute. The plaintiff may in all cases exercise this option, and the same holds when the suit is between two foreigners.

We may mention that, in the case of a contract by correspondence, the proper course is to leave to the judge or Court the decision as to the place in which the parties really intended the contract to be made and concluded between them. It is a question of fact, to be settled by the circumstances of each case, and for determining which no exact rule can be laid down.

Further jurisdiction in certain cases.

The Tribunals of Commerce have also jurisdiction in relation to the following :—

1. Actions against factors, clerks, traders or their agents in relation to business or trade.
2. Negotiable instruments subscribed by receivers, paymasters, collectors or other public Government accountants.

Bankruptcies.

Tribunals of Commerce have jurisdiction of all that relates to bankruptcies, pursuant to the provisions of book iii. of the present code.

In the cases in which bills of exchange are considered as simple promises only, by the terms of Art. 112, or when promissory notes bear the signatures of non-traders only, or

When several parties are sued as co-defendants (as in the case of several indorsers of a bill of exchange), the plaintiff may sue them all before the Court within whose jurisdiction one of them has his domicile; the only stipulation being, that the defendant, whose domicile is so selected, must be genuinely liable, and not put forward for the purpose of causing expense to the others.

Partners.

The jurisdiction of the Tribunals of Commerce is expressly extended to partnership disputes. As a firm must have a principal place of business, this place is taken as the domicile of the firm, and it should be used before the Court within whose jurisdiction it is situated. As a rule, all firms or Companies have a head establishment designated in their deed of partnership or association; if not, the domicile of the firm or Company is a question of fact to be decided by the Court.

French creditors of a foreign Company, which is in liquidation or bankrupt, maintain the right to sue before French Courts.

3.—Appeal.

The jurisdiction of the Tribunals of Commerce in respect of the matters which they are authorised to decide is, generally speaking, subject to appeal, but the right to appeal is in certain cases taken away by statute.

The tribunal of Commerce is a Court of Appeal to review the decisions of the councils of experts. No appeal lies from the decision of the Tribunal of Commerce.

1. *When the parties consent to accept its decision as final.*—The consent must be given by all parties to the suit, and it is necessary that each party should be competent to give it. Further, the subject-matter of the suit must be such as lies properly within the jurisdiction of the Court. The consent of parties can so far extend the Court's jurisdiction, as to render it a final Court in matters within its cognisance; but no act of parties to a suit can create a jurisdiction in the Court which does not properly belong to it.

2. *When the claim is for a sum not exceeding 1,500 fs. (£60).* Care must be taken in estimating this amount. The proper criterion is the

have not been made in relation to commercial operations, exchange, banking or commission, the Tribunal of Commerce must refer such cases to the Civil Courts, if so required by the defendant.

When such bills of exchange and promissory notes bear at the same time signatures of traders and of non-traders, the Tribunal of Commerce has jurisdiction, but it could not even formerly order the arrest of individuals who were not traders, unless they entered into engagements in relation to commercial acts, exchange, banking or commission. (Imprisonment for debt is abolished in France except in certain cases, *see* Index.)

The following are not within the jurisdiction of the Tribunal of Commerce, viz. :—

Cases not
within jurisdic-
tion.

Actions brought against a landowner, agriculturist, or

amount set forth by the parties themselves, and not the sum for which judgment is given by the Court, otherwise it would be in the power of the Court, by its own decision, to take away the right of appeal to a superior Court.

On the other hand, the right of appeal is strictly limited by the amount of the claim. If the action involves a question of title or a dispute in which rights of the most important nature are involved, this fact has no influence upon the right to appeal; the amount in dispute is alone to be considered.

Further, this amount must be settled with reference to the principal sum claimed. If that sum be under 1,500 fs., but by reason of costs and other accessory expenses be raised above it, there is no appeal.

Costs are not allowed to be included in reckoning the amount, on the ground that they did not begin to come into existence until the commencement of the action. It follows that, even if the costs exceed 1,500 fs., there is no appeal unless the principal sum originally claimed also exceeded that limit.

It must be added that, in all cases, any party to a suit can appeal against the taxation of costs, on the ground that the proper scale of costs has not been followed in the taxing.

Interest accrued due before action brought forms part of the sum claimed, and should be added to it, but interest falling due after the commencement of the action cannot be reckoned in. Nor can any claim for damages arising from some cause subsequent to the commencement of proceedings.

But wherever the claim is for unliquidated damages, or for some relief or remedy which cannot be reckoned in money, an appeal always lies, *e.g.*, against a judgment prohibiting the use of a trade mark or sign; or when the claim was that a commercial Company should be declared null and void, or a claim to cancel a lease.

If two causes of action are joined together, the one for unliquidated damages and the other for a sum less than 1,500 fs., the right to appeal

wine-grower, for the sale of produce arising from the soil cultivated by him. Actions against traders for payment of produce and merchandise bought for their private use. Nevertheless, bills of exchange given by a trader are reputed to be given in relation to his business; and those of receivers, paymasters, or other public Government accountants, are reputed to be given in relation to their official capacity, unless the contrary appear upon the documents themselves.

Judgments,
when final.

The judgments of the Tribunal of Commerce are final in the following cases:—

1. When the parties subject to such Tribunals have voluntarily declared that the case shall be decided definitely and without appeal.

from a decision of the Tribunal of Commerce exists or does not exist, according as the point in dispute as to the sum less than 1,500 fs. is or is not closely bound up with the other matter in dispute.

If two alternative claims are put forward, the appeal lies if either of them exceeds 1,500 fs., *e.g.*, if the plaintiff sues for specific performance of a contract of the value of 2,000 fs., claiming in the alternative 1,000 fs. damages. The same rule holds if the plaintiff sues in one claim for several debts which he joins together, and which in the aggregate amount to more than 1,500 fs., although no separate item is of that amount. On the other hand, if a debtor, not jointly and severally bound, is sued with his co-debtors, each being liable to pay a less sum than 1,500 fs., there is no appeal.

Counterclaim.

By the Law of March 3rd, 1840, if either the claim or the counterclaim exceed 1,500 fs., the appeal lies; but if each separately does not exceed that sum, there is no appeal. The judges have power to examine a counterclaim and investigate the *bonâ fides* of the defendant if the plaintiff's claim is for less than 1,500 fs. and the counterclaim founded on the same transaction exceeds that sum; and if the counterclaim appears to be put forward for the sole purpose of technically obtaining a right to appeal, they can refuse to grant the appeal.

The Tribunals of Commerce cannot decide actions brought against a landowner, agriculturist, or wine-grower for the sale of produce arising from the soil cultivated by him, nor actions against traders for goods supplied for their personal or private use. There is a presumption of law that bills of exchange given by a trader are given in the course of his business until rebutted by evidence. And bills, &c., given by receivers, pay-masters, or other public Government accountants, are presumed to be given by them in their official capacity, unless the contrary appear upon the documents themselves.

2. As regards all claims of which the principal does not exceed the value of 1,500 fs.
3. Counterclaims and claims of set-off, which, although added to the principal sum, would not exceed 1,500 fs. If one of the principal claims or counterclaims amounts to more than such sum, the Tribunal can only decide, as regards them, as a Court of First Instance. Nevertheless, it can decide definitively upon claims for damages, when they are exclusively based upon the principal demand itself.

In the districts where there are no Tribunals of Commerce, the Judges of the Tribunal Civil exercise their functions, and have jurisdiction over the matters appertaining to the commercial judges by the present law.

Where no Tribunals of Commerce exist, the civil Courts adjudicate.

The procedure in such case is the same as before the Tribunals of Commerce, and judgments produce the same effects.

Procedure in the Tribunals of Commerce.

In the Tribunals of Commerce the procedure is conducted without the interposition of *avoués*—*agréés* are employed.

Cases conducted by *agréés*.

All actions must be commenced by a writ according to the formalities prescribed in Arts. 59 *et seq.* of the **Code of Civil Procedure**. Thus the date, names, professions and domiciles of the parties, the statement of the claim, the indication of the Tribunal, and the time for appearance, must be set out, otherwise the proceedings are void.

Actions commenced by writ.

The time for appearance cannot be fixed for less than one day after the date of the writ.

Time for appearance.

In special urgent cases, the President of the Tribunal can cause parties to be summoned to appear at a day's or an hour's notice, and can order personal property to be attached; the plaintiff can also be ordered to furnish security or to prove his solvency to the extent thereof. The above orders are executory, notwithstanding appeal.

Urgent cases.

In maritime cases, in which the parties are not domiciled in France, and in actions relating to the stores, victualling and crews of ships about to sail, and in other urgent and provisional cases, the parties can be summoned to appear at a day's or an hour's notice without an order, and judgment by default can be immediately given.

The plaintiff has the option of proceeding—in the Tribunal of the domicile of the defendant, in that of the district in which the promise was made and the goods delivered, or in that of the district in which payment is to be made.

The parties must appear in person or by an agent, furnished with a special procuration.

Election of domicile.

If the parties appear, and at the first hearing no final judgment is given, those not domiciled in the place in which the Tribunal is held must elect a domicile there. Such election of domicile must appear upon the record of the Tribunal; and in default of such election the service of all documents relating to the cause, and even the notification of the final judgment in the action can be validly made at the office of the Court.

No security for costs required from foreigners.

Foreigners, being plaintiffs, are not required in commercial suits to give security for the costs or damages which may be given against them, and this rule applies to cases in which such suits are brought in the civil Tribunals, in places where Tribunals of Commerce do not exist.

Incompetency of Tribunal.

If the Tribunal is incompetent in relation to the matter in dispute, it will refer the parties to another Court, notwithstanding that no plea to its jurisdiction may have been raised. A plea to the jurisdiction for any other cause cannot be entertained unless it be put in previously to any other defence.

Practice.

The same judgment can, in dismissing the plea of incompetency, decide upon the merits of the case, but the decisions must be separate—one as to the incompetency, and the other as to the merits. The decision as to the former can always be appealed against.

Writs of revivor.

Widows and heirs of litigants in the Tribunal of Commerce can be sued by writ of revivor, or a new action can be entered. In case of dispute as to their qualities or representation, the questions relating thereto are sent for decision before the ordinary Courts, and the merits of the case are subsequently adjudicated upon by the Tribunal of Commerce.

Practice in cases of disputed documents.

If a document produced in evidence is contested, challenged, or alleged to be a forgery, and if the party producing it insists upon its validity, the Tribunal of Commerce refers the question to the proper judges for decision. Meanwhile the case stands adjourned. If such document, however, relates to one part of the case only, it can be passed over, and judgment delivered in relation to the other features of the claim.

Examination of parties in Court or upon commission.

The Tribunal can, in all cases, even of its own accord (*d'office*), order that the parties shall be heard in person in

Court or in chambers, and upon proof of their inability to attend, the Tribunal can appoint one of its judges, or even a justice of the peace, to take their evidence, who will draw up a report thereof.

If it be necessary to refer the parties before *arbitres*, for the examination of accounts, documents or books, one or more *arbitres* are appointed to hear them, and to bring them to a settlement, if possible; in default, the *arbitres* will forward their opinion of the case to the Court. Should it be necessary for places to be inspected or works or goods valued, one or more experts may be appointed for the purpose. Such *arbitres* or experts are appointed by the Tribunal, unless the parties mutually agree to their nomination at the hearing.

Arbitres, their duties.

No legal personal objections against the cause being adjudicated upon by the *arbitres* or experts can be submitted except within three days subsequent to their appointment.

The reports of the *arbitres* and experts must be filed in the offices of the Tribunal.

If the Tribunal orders oral testimony to be given, the witnesses must be summoned and their evidence taken in the manner prescribed in Arts. 34 to 40 of the Code of Civil Procedure.

Reports of *arbitres* are filed.

Judgments must be drawn up according to the forms set out in Arts. 141 to 146 of the Code of Civil Procedure.

Judgments, how drawn up.

If the plaintiff does not appear, the Tribunal will give judgment by default against him, and will discharge the defendant from the claim. If the defendant fails to appear, judgment by default will be given against him, and the claim of the plaintiff will be admitted if legally proved. No judgment by default can be notified (*signifié*) but by a *huissier* appointed by the Tribunal. Execution can issue one day after notification, and any time up to *opposition* being lodged against the judgment (which is equivalent to an application to set it aside).

Default of appearance.

Practice.

Execution.

Execution must issue upon judgments by default within six months from the date they were given, otherwise they will be considered void.

Applications to set aside judgments by default can be made at any time previous to and when execution is issued upon them.

Setting aside judgments.

Such application (called *opposition*) suspends the execution or seizure, unless it has been ordered, notwithstanding appeal.

Effect of "*opposition*."

The *opposition* must set out the reasons upon which it is based, and be fixed for hearing within the delays prescribed by law. It must be served at the domicile chosen by the opponent.

If execution be issued, *opposition* for the purpose of setting it aside can be made *at the time* by a declaration inserted in the return of the *huissier*, and such *opposition* stays execution; but the defendant must proceed within three days with his application or *opposition*, and bring it before the Tribunal, otherwise it will be of no effect.

Provisional
execution of
judgments not-
withstanding
appeal.

Tribunals of Commerce can order the provisional execution of their judgments notwithstanding appeal and without security being given, when the claim is based upon a document not challenged, or upon a previous judgment not appealed against; in other cases execution cannot issue unless upon security being furnished, or solvency to the extent thereof being proved to the satisfaction of the Court.

Security, how
given.

Security is given by serving an *acte* at the domicile of the appellant if he resides in the district of the Tribunal, otherwise at the domicile chosen by him, pursuant to Art. 442 of the Code of Civil Procedure, calling upon him at a certain time to attend at the *greffe* or office of the Court, to inspect the security offered if security be ordered, or to attend in Court in case of dispute, to receive its decision upon the question of admission.

Practice.

If the appellant fails to appear, or does not dispute the security, it will be admitted at the time. If he disputes it, the question will be decided at the hearing of the summons. In any case the decision will be executory, notwithstanding appeal.

Tribunals of Commerce cannot adjudicate in reference to the execution of their judgments.

The hearing,
and of adjourn-
ments.

Upon the day named in the writ, the case is called on before the Tribunal, and unless it be an urgent matter, is adjourned for a week or a fortnight, and from time to time again successively adjourned for the same period, until it comes on in its turn to be argued.*

Death of
parties.

If one of the parties die before the defendant has put in his defence, the suit must be continued in the name of his legal representatives, but if the defence has been put in previously

* As the same judges only sit on certain days of the week, the cases are always adjourned, either for seven or fourteen days, in order to be again referred to the same judges.

to the deace, judgment can be given without the proceedings being amended by substituting their names.

The contentions of the parties are submitted orally to the Court either by the litigants themselves or by their counsel, *agréés*, or agents specially appointed. Cases are argued *vidé voce*.

In complicated cases, the parties generally put in a written note, or *mémoire* sustaining their case at the close of the arguments. *Mémoires*.

The judges can, after the hearing, refer the matter to the examination of one of their number. In this case such judge, who is termed *rapporteur*, convenes the parties, and hears their explanations and examines the documents and evidence, and submits his decision to his colleagues in the council chamber, where the judgment is drawn up and subsequently pronounced by the president at a public audience. Power of judges to refer cases.

If the Tribunal is not sufficiently enlightened by the pleadings and documents submitted in substantiation thereof, it can, before giving judgment, make an order, according to the different cases, that an inquest or valuation take place. It can order the parties to be interrogated, or an inspection of the premises, or cause the parties to be put upon their oaths. The Court may require the parties to be heard orally at the public audience, or in the judges' room; if they are legally prevented from attending, a judge may be deputed to attend upon them and take their evidence. Inquests, valuations, interrogatories.

If the claim relate to a multiplicity of matters requiring to be established by the production of books, correspondence, or by the evidence of witnesses, the Tribunal can appoint an *arbitre*, or master, before whom the parties must attend and prove their case. Questions of account.

When he has received the explanations of the parties, inspected the correspondence, and heard the witnesses, he draws up a report setting out all the facts of the case, and presents the same to the Tribunal. This document contains the arguments upon which each of the parties has based his claim or defence, and the *arbitre* further gives his opinion as to the terms in which judgment should be delivered. Appointment of arbitres.

The fees of the *arbitre* are payable by the plaintiff at the outset, but they are charged in the end to the losing party, together with the general costs. Duties of arbitres.

When the report of the *arbitre* is drawn up, it is deposited and filed in the offices of the Court (*greffe*).

| | |
|--|---|
| Practice. | Either of the parties can move the Court that the report be brought up and judgment given according to its tenor. |
| Judgment. | At the day fixed by the writ, the report is opened by the officer of the Court (<i>greffier</i>), and as soon as the cause is reached it is argued before the full Tribunal, when judgment is given. |
| Costs. | The unsuccessful party is condemned in the costs, but such costs include only stamp duties, registration and Court fees and <i>huissiers'</i> expenses. Counsel's fees, in cases where they appear, are not included. Each party in an action has invariably to bear his own counsel's fees; whatever may be the result of the litigation, this is the same in all the Courts. |
| Counsel's fees. | |
| Judgments by default for non-appearance. | <p>"If the plaintiff does not appear upon the day named in the writ, the Tribunal will give judgment by default against him, and decide against his claim. If the defendant fails to appear as above, judgment by default will be entered against him, and the claim of the plaintiff will be allowed, if proved.</p> <p>"Judgment by default must be executed within six months of their date, otherwise they become void." (Cod. Proc., Art. 156.)</p> <p>"If the judgment by default is given against a party having appeared, but having refused to plead, no application to set aside the same can be received after eight days from the <i>signification</i> of such judgment, viz., after service of notice of the judgment upon the party against whom the same has been rendered; this default is called '<i>défaut faute de conclure</i>.'" (Cod. Proc., Art. 436.)</p> <p>If the judgment is given against a party for non-appearance, he can apply to set aside the same within any time up to and at the time of issuing of execution.</p> |
| Meaning of execution. | <p>"The judgment is reputed to be executed when the goods seized have been sold, or when the seizure of real property is notified to the debtor, or when the costs of defence have been paid, or when, through any act, the defendant has admitted the existence of the judgment.</p> <p>"An application to set aside the judgment by default, called <i>opposition</i>, suspends execution, unless execution be ordered to issue notwithstanding <i>opposition</i>."</p> |
| "Opposition" suspends execution. | |
| Proceedings barred after three years. | If the plaintiff allows three consecutive years to elapse without taking any further steps to obtain judgment, the defendant can plead that the proceedings have become barred. In this case the entire proceedings are annulled, but the plaintiff can recommence the action. If after the expiration |

of the three years the plaintiff does some act of procedure towards obtaining judgment, before the defendant has availed himself of the plea of prescription, a further period of three years must elapse without any further steps being taken by him before the defendant can plead the statute. A plaintiff can thus indefinitely avoid the above rule.

When a plaintiff neglects to proceed to trial, the defendant can bring the case before the Court and obtain judgment by default in his favour. Such a judgment is termed a *défaut congé*.

No appeal lies from a judgment of the Tribunal of Commerce unless the amount in dispute exceeds 1,500 fs. (£60). No appeal under £60.

Appeals must be made from *jugements contradictoires* * within two months from the date of *notification* of the same being served at the domicil of the losing party. As regards appeals from judgments by default, the time runs from the date when *opposition* can no longer be received.

Parties resident out of France have further time to appeal beyond the two months above stated. Parties abroad.

The delays in these cases are governed by Art. 73 of the Code of Commerce, a translation of which is printed *in extenso* in the present treatise (see Index).

Tribunals of Commerce can order that execution issue upon their judgments, notwithstanding appeal and without giving security, when the claim is proved by documents which have been unchallenged, or by a prior and final judgment. In other cases execution cannot issue as above, unless security be given, or the party issuing execution prove his solvency to the satisfaction of the Court. Execution can sometimes issue notwithstanding appeal.

In practice, however, security is generally given in cash and the amount lodged in the "*Caisse des Depots et Consignations*" (see Index). Attention is specially directed to this provision, as it enables a successful plaintiff to obtain immediate payment and satisfaction after recovering judgment in the Tribunal of Commerce.

In many cases the losing party lodges an appeal for the purpose of gaining time. Appeals to gain time.

No leave is required. The effect of this is to delay the case for several months and to put the opposite party to considerable expense. When the object of the appeal is thus apparent, the

* See "Dictionary of Legal Terms."

plaintiff should pay into the *Caisse* the amount for which he has recovered judgment, together with costs, and then apply for and obtain an order of course enabling him to issue execution notwithstanding appeal. Upon execution being issued, the defendant generally abandons the appeal, unless he has a *bonâ fide* defence, and thus the litigation is at an end.

In any case this energetic action generally results in a speedy settlement.

If the appeal proceeds, and the defendant succeeds, and the plaintiff is thus proved to have issued execution wrongfully, the defendant retires the sum lodged in the *Caisse*, and is thus reimbursed without being compelled to sue the plaintiff. He can, however, proceed against him for damages for wrongful execution.

If the plaintiff succeeds on the appeal, he also retires the amount deposited and the litigation then ends.

Costs of litigation in France.

The costs of litigation in the Tribunal of Commerce are insignificant compared with the scale customary in England. The expensive and intricate interlocutory proceedings incidental to English legal procedure are unknown in France.

Appeals.

Appeals from certain judgments rendered by Tribunals of First Instance, or Courts of Appeal, can be carried to the Court of Cassation. For full information upon this subject, the reader is referred to the special chapter on the Court of Cassation. The periods within which such appeals must be instituted are set out in the Law of 3rd June, 1862, Arts. 1 to 5, as follows:—"The time for appealing to the Court of Cassation is within two months from the date of the *signification* or notification of the decision appealed against being served personally, or at the domicile of the opposite party."

Parties abroad

Art. 5 of the above Law enacts that when the plaintiffs or defendants reside out of France, the periods for appealing to the Court of Cassation are increased, pursuant to the provisions of Art. 73 of the Code of Procedure.

Practical Instructions to Suitors.

Practical instructions to suitors.

Actions in the Tribunals of Commerce are conducted, as we have seen, by a class of solicitors called *agréés*, who prepare and argue the cases of their clients, and thus in a measure combine the functions of solicitor and counsel.

They cannot act unless by virtue of a special procuration, or *pouvoir*, signed by the party they represent.

We annex the usual prescribed form of such *pouvoir*, in the French language, together with a literal translation into English. Special procuration requisite.

Printed forms of *pouvoirs*, duly stamped, can be obtained through any solicitor in England upon application to an *agr  * direct, or to one of the English solicitors practising in France. The names of the parties to the action, and the date, should then be filled in, and the document signed at foot by the client. The words "*Bon pour pouvoir*" must in every case be written by the party signing the *pouvoir*, above his signature.

Printed forms are not indispensable. The French form Forms. can be copied out on ordinary plain paper and signed as above, and stamped upon arrival in France.

The whole of the written documents relating to the case Evidence. must be forwarded with the *pouvoir*, such as bills of exchange, invoices, certified extracts from account-books, bills of parcels and correspondence, together with a concise statement of the case.

The list of *agr  s* practising in Paris for the time being Agr  s. will be found in the "*Didot-Bottin*," the well-known French Directory, and in nearly the whole of the Diaries published French Directory. in Paris.

The list of English solicitors practising in Paris appears in the English "Law List" for the current year. They prepare the instructions and undertake the conduct of cases in the Tribunals of Commerce, but they do not appear in Court. They, however, personally represent their English clients before the *arbitres* and judges in chambers, and supervise and control the proceedings throughout; but the cases are entered and the forms of procedure complied with by *agr  s*, whose privileges have been fully described. English solicitors in France.

The annexed form of procuration is available in *litigious* cases only. A special prescribed form of *pouvoir* is requisite in bankruptcy proceedings, and will be found annexed to the practical instructions at the end of the commentary upon the law of bankruptcy in the present work.

Stamp.

POUVOIR.

Je, soussign   JOHN SMITH, demeurant    Londres, rue 65, Form of procuration.
 Cornhill, donne pouvoir    M. (name and address of agent)

au Tribunal de Commerce

de pour moi se présenter devant ledit tribunal sur l'assignation
donnée à (name of opponent)

requête

suivant exploit de

huissier à

en date du

18

prendre toutes conclusions, présenter et plaider
tous moyens qu'il jugera utiles, former toutes demandes in-
cidentes, défendre aux demandes qui pourraient être formées
contre , accorder termes et délais, présenter et
signer toutes requêtes, transiger, recevoir le montant de
la créance, en donner quittance, substituer dans tout ou partie
des présents pouvoirs et généralement faire jusqu'à jugement
définitif tout ce qu'il croira convenable à intérêts,
promettant l'avoir pour agréable et le ratifier,

Londres, ce 30 May, 1880,

Bon pour pouvoir,

JOHN SMITH.

(Translation.)

PROCURATION.

Translation.

Stamp.

I, the undersigned JOHN SMITH, residing at 65, Cornhill,
London, hereby empower M. (name and address of agent

),
at the Tribunal of Commerce,

to appear for me before the said Tribunal in relation to the
writ issued against

at the suit of

pursuant to the service effected by M.

huissier at

dated the

1880

adopt all arguments, present and plead
all matters which he may deem expedient, interpose subsidiary
demands, defend claims that may be entered against me, give
time, present and sign all petitions, with power of substitution
in relation to the whole or part of these presents, and generally
do, up to final judgment and execution, all that he may con-
sider expedient for my interests, and I promise to approve
and ratify the same.

London, 30th May, 1880,

Bon pour pouvoir,

JOHN SMITH.

CHAPTER V.

Service of Writs.

The service of writs and process in France is regulated by the provisions contained in Art. 63, 68, 69, and 1,037 of the Code of Civil Procedure. Service of writ in France.

Consequently writs cannot be served on Sundays or other legal *fête* days unless pursuant to a judge's order. Service must be effected between six o'clock in the morning and six o'clock in the evening from 1st October to 31st March inclusive, and between four o'clock in the morning and nine o'clock in the evening from 1st April to 30th September inclusive.

Writs may be served personally or left at the residence of the defendant. Personal service is valid if effected on the defendant elsewhere than at his residence. How effected.

If the *huissier* is unable to meet with the defendant, or with any of his family or servants at his residence, he can serve a copy of the writ on a neighbour, who will sign the original. Should the neighbour refuse or be unable to sign, the *huissier* hands the copy writ to the mayor of the *commune*, who *visés* the original writ.

If the defendant has no fixed domicil in France, the writ can be left at his actual residence.

If his place of residence should be unknown, service is effected by posting up the writ on the principal gate of the tribunal in which the action is brought, and a second copy is served upon the *procureur de la République*, who *visés* the original.

Parties residing in the French colonies or abroad are sued at the domicil of the *procureur de la République* attached to the Tribunal of First Instance, in the district in which is situate the Tribunal of Commerce before whom the action is brought. The *procureur* *visés* the original, and sends the copy to the Minister of Marine for transmission to defendants residing in the French colonies, and to the Minister of Foreign Affairs, for transmission to parties residing in foreign countries. Parties abroad.

The service of writs on board ship need not be on the defendant personally. The writ can be left with any person on board. The ship is considered to be the domicil of the defendant.

If there are several defendants, the writ can be issued in

the tribunal of the domicile of either of them, at the option of the plaintiff. This provision applies only in the case of the several defendants being sued in relation to the same cause of action.

Partnerships
and Companies.

Partnerships and Companies must be sued in the place in which their principal establishment is situate. But in certain cases, actions can be brought in the places in which important branch offices are situate. The cases and decisions upon these points are very numerous. (*See* p. 426, J. R. de Couder, "*Dict de Droit Commercial.*")

CHAPTER VI.

OF EVIDENCE.

Written and Oral Evidence.

The word *acte* signifies the documentary or written evidence establishing a fact or an agreement.

Writing
essential in
cases over £6

A writing must exist in all cases in which the subject-matter exceeds 150 fs. or £6. The evidence of witnesses, subject as hereinafter appears, is not admitted in cases exceeding the above sum.

Witnesses.

The evidence of witnesses is not receivable to contradict or add to written documents, nor in relation to that which may have occurred previous to their execution, whether or not the subject-matter exceeds 150 fs. (*Code Civil*, Art. 1,341.)

The above rules admit of exception when a commencement of written proof exists, when it has been impossible for the creditor to obtain proof of the obligation which has been contracted towards him, and when the creditor has lost his security through accident or *vis major*.

Commercial
cases.

In commercial matters, however, the judge has in general the discretion of admitting oral testimony, whatever may be the amount in dispute. (*Code of Commerce*, Art. 109.)

Of Books to be kept by Traders.

Books of
traders.

The French law is very strict as regards book-keeping by traders.

Traders are compelled to keep books. This obligation is prescribed in the interest of the trader and in that of third

parties. A trader who does not keep books is at a disadvantage in the event of litigation, through not being able to produce evidence in support of his claim or defence, and in case of bankruptcy he incurs the pain and penalties attaching to *banqueroutiers simples*. (See chapter on Bankruptcy.)

Traders *must* keep the three following books:—

1. The *livre-journal*;
2. Copy letter-book;
3. *Livre des inventaires*.

The *livre-journal* is so called because it contains entries, day by day, of the assets and liabilities of the operations and dealings of the trader, and of all receipts and payments of whatever nature. But sums employed for his domestic expenditure are permitted to be entered up once a month only.

The copy letter-book needs no description. Traders must file all letters they receive.

The *livre des inventaires* is a special register upon which traders must transcribe the balance-sheet which they are obliged to draw up each year of their assets and liabilities.

Traders keep other books of account, according to their necessities, which are not required by law, but the latter do not dispense them from keeping the three categories above mentioned.

These books are subjected to certain formalities:—

1. They must be kept in order of date, without blanks, omissions, or marginal notes;
2. They are *cotés*, *paraphés* and *visés* before being used by one of the judges of the Tribunal of Commerce, or by the mayor or an *adjoind*;
3. Lastly, the *livre-journal* and the *livre des inventaires* are *paraphés* and *visés* once during each year;

The copy letter-book is not *viséd* each year.

If the above formalities be not complied with, the books cannot be admitted in evidence.

Traders must preserve their books for the space of ten years.

In an action between a trader and a non-trader, the books of the trader are evidence against him, but not in his favour; the judge can only tender the oath (*serment supplétoire*) to the trader according to the circumstances (Arts. 1,330, 1,329, 1,367 of the Civil Code).

In an action between two traders, if the dispute relates to

commercial dealings, the books are admitted as evidence, but not so in relation to civil transactions.

The Court can order the books of traders to be produced for examination. If such books are in distant places, the tribunal adjudicating in the action can address a rogatory commission to the tribunal of the place in which they are deposited for their examination, or if no tribunal exists in such place, a justice of the peace is ordered to make the necessary extracts therefrom, and to forward them to the adjudicating tribunal.

The books kept by a trader can be admitted by the judge as evidence between traders in relation to acts of commerce. This is a derogation of the principle that *nul ne peut se créer un titre à soi-même*; but the law does not compel a judge to admit such evidence, the power is discretionary only. (See Art. 109 of the Code of Commerce.)

CHAPTER VII.

Of Suing in forma Pauperis (Assistance Judiciaire).

Suing in formâ pauperis.

Destitute persons in France have the same right of suing in the Tribunals of Commerce as in the Civil Courts, subject to the regulations contained in the Law of 22nd January, 1851.

There appears to be some uncertainty as to whether destitute foreigners, not authorised to establish their domicile in France, can claim *l'assistance judiciaire* in the absence of reciprocal treaties between France and their own countries. The decisions are conflicting.

Indigent individuals are alone entitled to the privilege. It is denied to insolvent Companies (Decree of the *Garde des Sceaux*, February 15th, 1861).

Petition.

Persons desiring to sue *in formâ pauperis* must address a petition upon plain paper to the *procureur de la République* of the tribunal of their domicile. To the petition must be annexed—(1) An extract of the applicant's tax paper, and a certificate from the collector that the tax is not claimed; (2) A declaration stating that the applicant is precluded, through poverty, from exercising his legal rights. This declaration must be affirmed before the mayor of the *commune* of the domicile of the applicant.

The permission to sue *in formâ pauperis* is given by the special office established in the principal judicial place situate in each district. Permission, where obtained

The office, before giving its decision, gives notice to the opposite party to attend and dispute the alleged indigence, or to give other explanations relating to the case. The decision of the *bureau* upon the question of indigence is final.

Within three days after the grant of the permission to sue *in formâ pauperis*, the president of the *bureau* forwards, through the *procureur de la République*, to the president of the Tribunal of Commerce, an extract of the decision granting the *assistance judiciaire*, with the documents relating to the case annexed.

A *huissier* is appointed to act for the indigent party. The latter is provisionally dispensed from payment of stamp and registration duties, and also from payment of the fees to *greffiers* and other officers of the Court.

In the event of the *assisté* obtaining judgment in his favour, he can recover full costs, as if he had not sued *in formâ pauperis*. Costs.

The Government registration office can then claim direct from the losing party the expenses to which the judgment has given rise, and the latter cannot set-off, as against the Government, any claim which he might have as a creditor against the successful party. If the parties agree to a settlement upon the basis of each bearing their own costs, such arrangement cannot affect the stamp office.

In the case of an *indigent* recovering judgment against several defendants, the above expenses are payable by them in the proportion of their respective interests in the subject of litigation.

The claim of the Government is a first charge upon the amount recovered.

A foreigner admitted to sue *in formâ pauperis* is nevertheless compelled to give security for costs. (For decisions, see p. 438, Ruben de Couder.) Foreigners.

The privilege of *assistance judiciaire* can be withdrawn at any time, upon proof of misrepresentation or fraud, or in the case of sufficient means coming to the *assisté* during the proceedings. Permission can be withdrawn in certain cases.

CHAPTER VIII.

Security for Costs.

Security for costs.

In all cases, *other than mercantile*, a foreigner, being a plaintiff, must give security for the payment of the costs and damages resulting from the action, unless he possess in France real property of a value sufficient to guarantee such payment.

Ancient custom

The *raison d'être* of security for costs is the same in French law as in English. It has existed in France for centuries.

The security can be given by a surety upon the conditions enumerated in Arts. 2,018 and 2,019 of the Civil Code.

Application.

Security for costs is not required unless upon the application of the defendant. The application must be made at an early stage of the proceedings.

Security for costs, called *caution judicatum solvi*, can be required, as we have explained, in all cases other than mercantile. Security can be demanded in the *Tribunaux Correctionnels*, or *quasi* Criminal Courts, as well as in the Civil Tribunals.

In commercial cases the costs of litigation are moderate, and the procedure expeditious and simple.

Criminal cases.

It should be explained here, that a party who suffers damage through an unlawful act, and who seeks reparation, has the choice between two jurisdictions, the criminal and the ordinary (*see* Art. 3 of the *Code d'Instruction Criminelle*). Therefore, when a foreigner intervenes, as a *partie civile* in a criminal prosecution, or is the direct prosecutor himself, he is compelled to furnish security if applied for by the defendant.

Security, how given.

According to Art. 167 of the *Code de Procédure Civile*, the judgment ordering the security must fix the amount thereof. The plaintiff can pay the amount into the *Caisse des Depots et Consignations* (equivalent in England to payment into Court), or show that he possesses real property in France sufficient to secure the sum; and in the latter case he is dispensed from furnishing security. The plaintiff need give no charge on his property. The fact of possession is sufficient. The usual practice is to pay the money into the *Caisse*. The plaintiff can appeal against the judgment ordering the security, should he consider the amount excessive, and the defendant has the same option in the reverse case.

Foreign plaintiff.

A foreigner plaintiff, suing in the French Courts for the

execution of a foreign judgment against a Frenchman, is not obliged to give security for costs, although proceeding in the Civil Tribunal, when the matter in dispute is commercial.

Security can be required from a foreigner who, having been unsuccessful in an inferior tribunal, carries his case to the Court of Appeal, notwithstanding that no security had been given in the inferior Court.

A foreigner who is authorised to establish his domicile in France is dispensed from furnishing security.

A foreigner who is sued by another foreigner in France cannot compel the plaintiff to give security for costs.

CHAPTER IX.

Of Attachments of Property.

Any creditor can, by virtue of notarial or private deeds showing his title (*titres authentiques ou privés*), attach moneys and effects belonging to his debtor in the hands of third parties, or prevent them from being handed over to him.

Power of creditor to attach moneys and property.

If no document exists, the judge of the domicile of the debtor, and even the judge of the domicile of the garnishee (*tiers saisi*), can upon petition order the attachment to be made.

Court having jurisdiction.

The writ of attachment issued, based upon a written document, or *titre*, must set out its contents and the amount for which the seizure is made. If the attachment is based upon a judge's order, the order must mention the amount for which the attachment or seizure is made, and a copy of the order must appear at the head of the writ.

Formalities and requisites to writ of attachment.

The writ must also contain election of domicile in the place in which the garnishee resides, if the creditor does not reside there. These provisions must be observed, or the proceedings will be void.

Particulars in writ.

Within eight days after the seizure the creditor must give notice thereof to his debtor, and call upon him to appear before the tribunal upon an application for its confirmation.

Notice must be given to debtor within eight days.

The garnishee must also be summoned within the same time, and for the same purpose.

If the creditor fails to proceed to confirm the attachment, it becomes void. Should he make default in summoning the

Consequences of default in proceeding to confirm attachment.

garnishee, all payments made by him up to the time of receiving notice of the attachment are valid.

Payments by
garnishee, when
void.

All payments made by a garnishee to the debtor, notwithstanding an attachment, are void, as regards creditors having lodged and notified such attachments, and they can compel the garnishee to pay over again. (*Code Civil*, Art. 1,242.)

Declaration of
garnishee.

The garnishee cannot be summoned to disclose the amount in his possession owing by him to the debtor, unless there exist a notarial deed or a judgment confirming the attachment. (*Code of Civil Procedure*, Art. 568.)

Garnishee
upon oath.

When summoned, the garnishee makes his declaration upon oath in the offices of the Court if he resides in the district, otherwise the declaration is made by him before the justice of the peace of his own residence. The above declarations can be made by a third party, duly authorised by a special procuration.

The declaration must set out the consideration and the amount of the debt, the payments made on account (if any), the document discharging the claim and the consideration thereof, and mention must be made of any further attachments: that may have been served.

The documentary evidence is annexed to the declaration, and notice of filing thereof is given to the creditor.

A garnishee who neglects to make a declaration, or who omits the details above referred to, will be considered indebted to the extent of the sum claimed of the debtor.

Government
salaries
attachable.

A portion only of the salaries paid by the Government to officials are attachable, viz. :—

One-fifth of the pay of the military on active service.

One-fifth of the salaries of civil functionaries and employés up to 1,000 fs.; one-fourth of the 5,000 fs. above; and one-third of the surplus over 6,000 fs.

Rules as to
pensions.

Pensions cannot, in general, be seized, but pensions, whether civil or military, can be retained up to a fifth, to satisfy debts due to the State.

The following cannot be seized :—

Certain funds
cannot be
attached.

1. Moneys due to the State, to *communes*, to hospitals, to charitable institutions, and sums due by the Government to contractors of public works;
2. Allowances for sustenance decreed by law;
3. Moneys and objects declared not liable to seizure by a donor or testator;

4. Moneys or pensions for sustenance, notwithstanding that they may not have been declared not liable to seizure by the will or gift.

Allowances for sustenance are not liable to attachment otherwise than in respect of claims for provisions supplied. The objects mentioned in Nos. 3 and 4 of the preceding paragraph can, only be seized by creditors whose claims were incurred subsequent to the deed of gift or receipt of the legacy. A judge's order must be obtained, and the proportion attachable is in his discretion.

Special laws have also decreed that *inscriptions de rente* on the *grand livre* of the public debt are not liable to seizure. (Laws of 8 Nivose, year VI., Art. 5, and 22 Florial, year VII., Art. 7.)

CHAPTER X.

Of Executions.

An execution, levied by a creditor upon the personal property of his debtor found in his possession, is termed in France *saisie exécution*.

Every execution must be preceded by a *commandement* or summons, personally served or left at the domicile of the debtor, calling upon him to pay. This summons must be served at least one clear day before levying execution.

The *commandement* must contain an election of domicile, until the termination of the proceedings, in the *commune* in which the execution is sought to be issued, if the creditor does not reside there; and the debtor can tender payment and serve all necessary documents relating to appeal or other proceedings at such domicile as above.

The following property cannot be taken in execution:—

1. Objects which are declared by law to be *immeubles par destination*.*
2. The necessary bedding of debtors and of their children residing with them, and the clothes worn by them.

Certain property cannot be taken in execution.

Bedding.

* Beasts of draught, agricultural implements, seed for sowing crops, beehives, ponds of fish, presses, boilers, crucibles, utensils in forges, paper and other manufactures. (*Code Civil*, Art. 524.)

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|--------------------------|---|
| Books. | 3. Books relating to the profession of the debtor, at his choice, to the value of 300 fs. |
| Educational instruments. | 4. Machines and instruments used for the education, practice or exercise of the arts and sciences, to the same value and at the choice of the debtor. |
| Military equipments. | 5. The equipments of the military, according to their grade. |
| Workmens' tools. | 6. The tools of workmen necessary for their personal use. |
| Provisions. | 7. Flour and provisions necessary for the consumption of the debtor and his family during one month. |
| Certain cattle. | 8. Lastly, one cow, or three sheep, or two goats, at the choice of the debtor, with the provender and straw necessary for their stabling and keep during one month. |

The above cannot be seized in respect of any claim, even for a debt due to the Government, unless in respect of provisions furnished to the debtor, or amounts due to the manufacturers or vendors of the said objects, or to the parties who advanced moneys to purchase, manufacture or repair them. The bedding or clothing specified in No. 2 cannot be taken in execution under any circumstances.

Growing fruits. Growing fruits can only be seized during the six weeks preceding the ordinary period when they become ripe.

Seizure of Real Property.

Real property. *La saisie immobilière* must be preceded by a summons to pay, and execution cannot issue until 30 days after service of such summons or *commandement* upon the debtor or at his domicile. The further provisions relating to this subject are contained in Arts. 673 to 689 of the Code of Civil Procedure.

CHAPTER XI.

Notarial and other Deeds.

Of Notarial Deeds—Actes Authentiques.

Of Deeds under Private Signature—Actes sous Seings Privés.

Of the Difference between Notarial Deeds and Deeds under Private Signature.

Of Actes Authentiques—Notarial Deeds, &c.

Definition of *acte authentique*. An *acte authentique* is a deed executed, with certain prescribed formalities, in the presence of a notary, mayor, *greffier*,

huissier, or other functionary qualified to act in the place in which it is drawn up. (*Code Civil*, Art. 1,317.)

An *acte authentique* is legal evidence of the facts and agreements contained therein, and is always admitted as genuine. It cannot be challenged on the ground of fraud, except by means of a complicated procedure entitled *inscription en faux*. (*Code Civil*, Art. 1,319.)

Execution can issue upon a notarial deed, without the necessity of obtaining judgment or fulfilling any formality. The Courts and officers of justice must lend their aid to the execution of *actes authentiques*, pursuant to the executory clause inserted at the heading of all such documents.

Actes sous Seings Privés.

An *acte sous seing privé* is a document drawn up and signed by the parties without the intervention of a notary. Definition of
*acte sous seing
privé*.

An *acte sous seing privé*, if admitted genuine by the party against whom it is set up, has the same effect between the parties who executed it, and their heirs and representatives, as a notarial deed.

A person against whom an *acte sous seing privé* is produced must either formally admit or deny having written or signed the document. His heirs or representatives are permitted to declare that they are not acquainted with the writing or signature of the party purporting to have written and signed the *acte*.

In cases of dispute as above, the tribunal orders an examination and verification of the *acte*.

The onus of proving the genuineness of a deed *sous seing privé* is upon the party producing it as evidence. A notarial deed, however, is admitted as evidence without verification. Evidence.

The genuineness of an *acte sous seing privé* can be established by comparison with other documents, by experts, by witnesses, and by presumptions.

Actes sous seings privés need not be written by the parties, but must be signed by them. A person who cannot write can execute a notarial deed only. The affixing by him of a mark or a cross on an *acte sous seing privé* would be invalid.

How Actes sous Seings Privés acquire a fixed date as regards Third Parties.

The fact of an *acte sous seing privé* being admitted to be genuine, does not alone admit of its being produced as Effect as
regards third
parties.

evidence against third parties; for this purpose it must acquire what is termed in France *une date certaine*.

Fixed date, how
acquired.

Actes sous seing privé do not acquire a fixed date as against third parties until the date when they are registered, or from the date of the death of the party or parties having executed the deeds, or from the date when the substance contained in such *actes* has been incorporated in notarial deeds.

Thus, so far as regards the contracting parties and their representatives, the date of the deed, as filled in by the parties, cannot be disputed; but as regards third parties, the rules just mentioned must be applied. In commercial matters, however, this principle is not always strictly applied; for instance, creditors are not precluded from proving in bankruptcies, for the reason alone that their *titres* had not acquired *une date certaine* before the adjudication.

Of deeds and documents which may legally be drawn up and executed under private signature (*sous seing privé*).

As a general rule, all deeds and contracts may be drawn up under private signature, with the exception of those which are specially provided by law to be executed before a notary, or public officials appointed for the purpose.

Deeds which
must be
notarial.

The following deeds and contracts are, however, required by law to be **notarial**:—

1. Marriage settlements;
2. Mortgages and cancellations thereof;
3. Donations *inter vivos*;
4. Revocations of gifts or wills;
5. The recognition of natural children;
6. Respective *actes* relating to marriage;
7. "Mystic" and "public" wills;
8. Transfers of patents of invention.

The transfer of a patent executed by a deed *sous seing privé*, by A. to B., would be valid between the parties themselves, but void as against third parties; thus, the owner could by notarial deed legally transfer the same patent to C., notwithstanding the previous transfer by *acte sous seing privé* to B., and C. would be the lawful owner, to the exclusion of B.

The parties can also specially agree that a notarial deed shall be executed.

If either of the parties cannot write, a notarial deed is obligatory, as has been already stated.

CHAPTER XII.

Of Interest and the Usury Laws.

The rate of legal interest in France was fixed by the Civil Code in 1804, at 5 per cent. in civil cases and 6 per cent. in commercial matters. At the same time parties were left at liberty to stipulate, as between themselves, for any higher rate which they might agree upon; but this freedom of contract was forbidden by a special statute of September 3rd, 1807. Legal interest is, at the present day, regulated as above-mentioned, by the Civil Code.

Legal rate of
interest in
France.

Usury
forbidden.

The exceptions to this rate are :—

1. Exceptions in favour of certain localities, *e.g.* : in Algiers the legal rate is 10 per cent., with no restriction against a higher rate, if so agreed by the parties; and in La Réunion the legal rate is fixed at 9 per cent. in civil cases, and 12 per cent. in commercial matters.

Exceptions.

2. In favour of persons : by a statute of June 8th, 1857, the Bank of France is empowered, if circumstances require it, to raise the rate for loans above 6 per cent.

3. On extraordinary risks : *e.g.*, in loans on bottomry bonds, the rate charged may be fixed by the contracting parties.

Bills were introduced in 1871 and 1877 to the National Assembly and the Chamber of Deputies, for the repeal of all restrictions upon interest, but on neither occasion did they become law. It may be noted that in most European countries no such restrictions exist.

The following kinds of interest are distinguished by French jurists :—

1.—Conventional Interest.

This means, as its name implies, the rate of interest which is fixed by the express or implied contract of the parties. An express contract definitely stipulates that interest shall be paid. In other cases, the interest payable must be deduced from the general circumstances, from the intention of the parties as gathered from documents, and from the nature and amount of the transaction.

Conventional
interest.

The general rule of law is that, when money is lent for business purposes, there is a presumption that the parties intend interest to be payable. However, as a matter of practice, the Courts are inclined to judge chiefly from the

document or agreement given or made in acknowledgment of the loan. In the interests both of lender and borrower, it is advisable the contract of loan should be drawn up in writing, and should contain the whole of the agreement made, with express mention of the interest reserved; the rate of course being within the prescribed limits, except in the cases above mentioned.

2.—Legal Interest.

Legal interest.

This term is applied to those cases in which the law expressly declares that interest shall be payable by the debtor without regard to any special stipulation between the parties. The kind of profit made, the relative position of the persons interested, and sometimes the usage of trade, come under this head.

If the article sold is one which is of itself productive, the purchaser is bound to pay interest on the price from the time of delivery, otherwise he would be in receipt of a double profit, both of that produced by the article which he has purchased, and also of the interest on the price which he retains.

A guardian is chargeable with interest on moneys received for his ward, reckoned from the date of such receipt. His duty is to invest them on behalf of his ward.

An agent is liable to his principal for interest on money belonging to the principal which he has used for his own business, *e.g.*, the cashier of a trading firm who receives money for the firm and uses it for his own purposes—not criminally—is bound to pay interest from the date of such receipt. In certain cases such appropriation may obviously amount to a criminal act. On the other hand, an agent who advances money for his principal can claim interest thereon as a matter of right. If the advances are made with the express consent of the principal, interest runs from the date of the advance, otherwise from the date at which it was demanded. In some cases, as when a joint contractor advances money in the interest of his partners, interest accrues from the date at which notice of the advance has been given.

A surety paying for his co-sureties has a full right to interest as against them.

Partners are liable to interest upon the amount which they have agreed to contribute to the partnership business from the date at which their contribution became due.

Any person holding money to which he has no title, and

not *bonâ fide*, is bound to pay interest from the day on which he received the sum so detained.

Interest is also due, after a certain date, on money forming part of an inheritance, and on legacies (*Code Civil*, Arts. 856, 1,014, 1,015).

Avoués (solicitors) can only claim interest upon their costs incurred in legal proceedings from the date of the issuing of the writ to recover them; but if an *avoué* or a notary advances money to a client provisionally, he has a right to interest from the date when his client has recovered the amount.

The regulations of the Civil Code, in respect of interest, do not apply to *comptes courants*.

Interest is mutually due on such accounts, unless by express agreement to the contrary.

3.—Judicial Interest.

By this term is understood the interest which is allowed by the Courts by way of indemnity or damages, although not due as a matter of absolute right, nor agreed upon by the parties. Judicial interest.

Such interest is allowed on money overdue—*e.g.*, on a bill of exchange not paid at maturity, when the creditor sues for his debt from the date of the summons, and is reckoned at the legal rate—*i.e.*, 6 per cent. on commercial transactions. A special demand must be made with precision and proper formality for the interest, otherwise it will not be ordered by the Court. Bills of exchange.

Costs which a party is ordered to pay bear interest only from the date when a formal summons for payment of them is issued.

The Courts have considerable latitude in allowing interest by way of compensation to a creditor, and are not restricted in any way by the date of default on the part of the debtor or of the summons. For instance, if a vendor has neglected to deliver goods, the Court may, if it think that the equity of the case requires it, allow interest from a date prior to the commencement of the action to compel delivery; and there is no appeal from the amount allowed by the judge.

4.—Compound Interest.

Interest overdue and unpaid will bear interest on two conditions :— Compound interest.

1. There must be a special agreement to that effect, or a summons must have been taken out for payment. Special agreement necessary.

2. The interest in question must be due for at least one year.

Any agreement to pay a special rate of interest for money lent must be in writing. Other evidence is not admissible to prove the rate agreed, even if the amount of the loan be less than 150 francs.

Exceptions.

The following are exceptional cases, to which the regulation as to the legal rate of interest does not apply :—

1. To a loan of personal property, such as stock or shares ;
2. To a loan of perishable goods ;
3. To loans where the risk is excessive, as a bottomry bond ;
4. To annuities ;
5. To special loans to traders, or for commercial purposes, when arrangements are made for payment by means of a sinking fund ;
6. To the discounting of bills, &c.

Foreigners.

With regard to contracts for payment of interest in France to a foreigner, entered into in foreign countries, and in accordance with the law of the country in which they were made, the French Courts will order the payment to be made according to the contract rate, even if it exceeds the legal rate in France. In the same way contracts between Frenchmen domiciled in a foreign country are binding if sued on in France, although the rate reserved exceeds the five or six per cent. allowed by French law. In such cases the interest due up to the date of the commencement of legal proceedings is recoverable.

Foreign loans.

Contracts for loans payable in foreign countries may be entered into in France at any rate of interest allowed in such countries.

An agreement entered into between Frenchmen abroad, with a stipulation for the payment of interest, according to the custom of the country, at the rate of 1 per cent. per month, is valid, although in excess of the legal rate permitted in France. The transaction is governed by the rule *locus regit actum*. (Civil Tribunal of Melun, 18th June, 1874.)

It is now settled law in France that the contract of interest is governed by the law of the place in which it was entered into. (Court of Cassation, 21st December, 1874.)

The Law of the 3rd September, 1807, applies to loans made in France only.

Statute of Limitations.

Arrears of interest cannot be claimed after they have been due for five years, in the case of annuities, alimony, rent, money lent, and generally speaking, money payable annually, or at any shorter periods. The following list contains most of the cases in which the claim will be barred by statute after five years have elapsed:—

Statute of
limitations.

1. Interest on Government stock or on money payable by the Government ;
2. Interest due from the *Caisse des Consignations* ;*
3. Salaries of clerks, employés, teachers, and others, not included in Arts. 2,271 and 2,272 of the Civil Code ;
4. Money advanced by one house of business in payment of bills due from another ;
5. Interest on protested bills, &c. ;
6. Money due from a partner to the partnership capital ;
7. Annual premiums payable to insurance Companies ;
8. Coupons of shares presented for payment to a Company five years after they were become due and payable ;
9. Interest on the price of a sale of realty ;
10. Interest on dowry ;
11. On the balance of a guardianship account ;
12. On a post obit bond relating to realty ;
13. On money paid by a surety for his principal.

The principle on which this law is founded is, that when the time of payment is ascertainable, the person claiming interest is bound to exercise his rights within a reasonable period and not embarrass his debtor by leaving him indefinitely in the possession of the money lent, &c., and then demanding in full the payment of many years' arrears.

The statute does not apply to persons retaining money *de mauvaise foi*, nor to advances made the exact date of which, from the number of transactions involved, cannot be ascertained ; as, for example, in the relations of principal and agent. It applies to minors and others under guardianship, whose remedy will be against their guardian, if he has failed to obtain payment from the debtor. It does not apply to husband and wife, nor to co-heirs in respect of profits earned since the *ouverture de la succession*. Lastly, the statute must be specially pleaded, and it is not the duty of the judge to take cognisance of it *ex officio*.

* See " Dictionary of Legal Terms."

CHAPTER XIII.

Lost or Stolen Securities to Bearer.

Owner of lost securities, measures to be adopted,

The owner of securities to bearer which have been lost or stolen has the choice of adopting one of the measures following :—

1. To receive the dividends on the security, and payment of the security itself if it becomes due :
2. To protect his ownership by preventing successive transfers of the security ;
3. To obtain a new certificate, in order to negotiate it, should he desire so to do.

In order to insure the payment of the dividends, or the reimbursement of the security if it becomes due, three formalities must be complied with :—

Opposition must be lodged.

1. An *opposition* must be lodged with the Company, or with the department or the *commune* by which the securities were issued.
2. An order to receive payment must be obtained from the president of the Civil Tribunal. Such order can only be granted one year after the opposition has been lodged, and when, since that date, two distributions at least of dividends or interest have taken place. (Arts. 2 and 3.)

It is considered that these distributions place the holder under the necessity of personally appearing to receive the dividends or interest ; and that if he does not so appear, presumption exists of fraud on his part.

In the event of refusal by the president to grant the authorisation in question, the person desiring to enter *opposition* may bring the matter before the Civil Tribunal of the place of his residence, and such tribunal will decide after having heard the *Ministère Public*. Judgment of the tribunal is productive of all the effects attaching to the order of authorisation. (Art. 7.)

When it is a question of coupons to bearer detached from the security, if the *opposition* has not been contested, the person lodging it may, after three years from maturity of the coupons and date of the *opposition*, claim the amount of the

said coupons from the establishment liable to pay the same, without being bound to obtain an authorisation.

3. Lastly, the party making *opposition* is bound to furnish security for the dividends or interest accrued due, and for the amounts which may be distributed during the two years following the date of the *opposition*. Security must be given.

Such security may be replaced by a pledge, or by the deposit with the *Caisse de Dépôts et Consignations* of the sums to be received. (Arts. 4, 5 and 6.)

Such guarantees only remain in force for two years from the date of the authorisation as regards dividends or interest, and as regards the capital, should it become liable to reimbursement, during 10 years from the date of such reimbursement, on condition that at least five years shall have elapsed since the date of the authorisation.

Effect of the accomplishment of the above formalities.

The party "opposing" has the right to receive the interest and dividends due at the time of the authorisation, or which may have afterwards become due, and even the capital of his security should it become payable. Effect of formalities.

Such payment immediately discharges the Company from liability, saving the right of the third party, to whose prejudice the payment may have been made, against the party who may have lodged opposition without sufficient cause, and against the surety for the period of two years. (Art. 9.) Company discharged from liability.

If, therefore, the Company, instead of paying to the "opposing" party pay to the bearer, it will not be freed from liability.

The law has, moreover, organised a special course of procedure in order to confront the holder with the "opposing" party. When the holder presents himself, the Company detains his security, giving him a receipt for the same, and gives notice by registered letter to the "opposing" party, thereby placing both parties under the necessity of settling their dispute before the Tribunals, both as regards the amounts received and the ownership of the security (Art. 10).

We have now to examine the second proceeding to be adopted by the "opposing" party, viz., that of protecting his property.

The formality to be fulfilled is to lodge an *opposition* with the syndicate of stockbrokers of Paris with a request to publish Second proceeding.

the same. In view of this publication, a special daily bulletin has been founded, to which all persons, and notably stockbrokers, interested in knowing what *oppositions* may have been made, can subscribe (Art. 11).

Stockbrokers.

The Law further imposes on stockbrokers the obligation of registering in their books the numbers of the securities which they may buy or sell, in order that such securities may be traced in case of need (Art. 13).

The effect of the accomplishment of this formality is to render the security untransferable in all places from the moment when the bulletin arrives or might have reached a subscriber. From this date the law prohibits all negotiation of the security, not only in Paris, but in the provinces, and not only on the Stock Exchange, but by private sale.

If the *opposition* has not been lodged, the security can be transferred, and the negotiations to which it may have given rise remain subject to common law (Art. 14).

Further special rules.

The following is a consequence of the common law, viz. :—

In the case of simple breach of trust, a party purchasing in good faith, before notification of the *opposition* to the syndicate, becomes indefeasible proprietor of the security.

In case of loss or theft, the “opposing” party may reclaim the security during a period of three years, even when in the possession of a *bonâ fide* holder (Art. 2,279, par. 2 of the Civil Code).

If, however, the holder has purchased the security on the Stock Exchange, or of a money-changer, the owner is only entitled to reclaim it on reimbursement to the holder of the price paid by him (Art. 2,280 of the Civil Code).

A third party, being holder of a security, has the right to dispute the *opposition* as irregular in form: this case falls within the scope of the case provided for by Art. 14 of the Law.

The transfer of securities may, in this case, therefore, be effected pursuant to common law, in the mode which we have just explained (Art. 12).

Opposition may be contested.

The third party may, in like manner, contest the *opposition* as having been unlawfully made. In this case the opposing party must prove in the ordinary manner that he is owner of the securities, and the third party may establish that he purchased before the publication of the *opposition*.

The third party may also proceed for indemnity against his vendor and against his stockbroker, but only when the

latter is in fault; that is to say, if the publication of the *opposition* in the bulletin had taken place before the termination of the bargain.

The remaining proceeding of the "opposing" party is, as New certificate. has been before said, to obtain a new certificate in order to negotiate his security should he require so to do.

He may obtain such certificate from the Company, but not After 10 years. until 10 years after the authorisation of the President of the Civil Tribunal, nor unless no person has in the interval applied to receive the dividend or interest. Any period during which the Company may not have distributed dividends or interest is not included in the prescribed limit of 10 years. (Art. 15.)

Lastly, the "opposing" party must guarantee by a deposit or surety that the number of the certificate, the nullity of which is demanded, shall be published by a special notice during 10 years in the daily stock and share list.

The new certificate bears the same number as the original one, with a note that it is delivered in duplicate; it confers the same rights as the original, which is thenceforward declared void.

When once the duplicate is delivered, the third holder only retains a personal right of action against the "opposing" party, who may have entered *opposition* without sufficient cause. Such action may be brought within a period of 30 years.

This Law only applies to securities issued by departments, Restriction of above provisions. *communes*, public establishments and Companies. Its application does not extend to bank notes and the public funds, which, in the interest of the State, are declared not liable to *opposition*. (Art. 16.)

CHAPTER XIV.

Transfer of Debts and Claims.

Of the Transfer of Debts and Choses in Action.

The document pursuant to which a creditor transfers his Transfer of debts and claims; claim to another person, is called a *transport* or *cession*.

The transferor is called the *cédant*, the transferee the *cessionnaire*.

The transfer of claims or debts can be effected in the same how effected.

manner as any sale, by a notarial deed or by a writing *sous seings privés*. The transfer can even be effected verbally.

Delivery takes place between the *cédant* and the *cessionnaire* by the handing over of the conveyance, which is conclusive between the parties themselves, but not as regards third parties. The transferee can render valid, and plead the transfer as against the debtor and third parties creditors of the transferor, by notifying the conveyance to them by a *huissier*, or the debtor can acknowledge its validity by a notarial deed.

If the debtor acknowledges the transfer by *acte sous seing privé*, such acceptance is of no effect as regards third parties, but it is valid between the debtor and the transferee. The debtor can even be a party to the deed of transfer, and mention his acceptance therein. Notice of the transfer can be served by the transferor as well as by the transferee.

Bills of
exchange.

Bills of exchange and promissory notes can be transferred by endorsement, even after maturity, and the transferee of such securities is validly possessed thereof as regards the debtor and third parties without any notification or acknowledgment being requisite.

The sale or transfer of a debt or claim includes the accessories thereto, such as security, *privilege* and *hypothèque*.

The vendor is not responsible for the solvency of the debtor unless by special stipulation.

Transfer of Claim to an Estate or Succession.

A person can sell to a third party his rights to a succession, provided such succession be *ouverte*.

Such sale or transfer can be made by notarial deed, or by *acte sous seings privés*.

Transfer of Litigious Rights.

Litigious
rights.

Sales or transfers may be made by notarial deed or by *acte sous seings privés*, and must be notified to the defendant by the transferor or the transferee.

A debtor against whom a right of action has been sold may acquit himself by reimbursing to the transferee the actual consideration paid by him for the right of action, with taxed costs and interest from the date of the payment of the consideration for the transfer. But the above provision does not take effect in two cases—

1. In the event of the sale having been made to a co-heir or co-proprietor of the *droit cédé*;

2. When it has been made to a creditor in payment of a debt due to him ;
3. When it has been made to the possessor of the estate the subject of the litigation.

CHAPTER XV.

Of Arbitration.

Arbitrators, called *arbitres*, are persons appointed by the Arbitration; parties to decide upon a matter in dispute.

Arbitration, in cases of mercantile partnerships, was formerly compulsory in France; but in 1856 a law was passed, formerly compulsory in certain cases ; attributing to the Tribunals of Commerce jurisdiction in disputes between parties; therefore arbitration at the present time is purely voluntary.

The deed by which the parties submit their differences to submission. arbitration is called *compromis*.

This submission to arbitration must be acted upon within three months from its date, otherwise it is void. (Code of Procedure, Arts. 1,006, 1,007.)

The *compromis* also terminates—

1. By the decease, refusal, resignation, or inability to act of one of the arbitrators, unless a clause exist providing for such contingencies;
2. By the expiration of the period agreed upon, or of three months if no time had been fixed;
3. By the conflict of opinions of two arbitrators, unless power be reserved to them to appoint an umpire.

Arbitrators cannot resign if they have once commenced to act.

The parties are compelled to produce their evidence at least fifteen days before the expiration of the *compromis*.

In the event of difference of opinion, the arbitrators empowered so to do must appoint an umpire at the time of giving their decision. If they cannot agree upon an umpire, they must make a declaration to that effect in their award, and an umpire will be appointed by the president of the Tribunal of Commerce upon application of either of the parties.

The umpire must give his decision within one month of accepting the appointment, unless a stipulation to the contrary

be drawn up. He must, before making his award, confer with the previous arbitrators who disagreed.

The arbitrators and the umpire must base their decisions upon the ordinary rules of law, unless it be specially provided in the submission that they may be at liberty to decide as *amiables compositeurs*.

Award.

The award is rendered executory by an order of the president of the Civil Tribunal of First Instance.

Awards cannot be set up in any case as against third parties (Code of Procedure, Art. 1,022).

Awards cannot be attacked by way of *opposition*.*

Appeals against awards.

Appeals against awards lie to the Civil Tribunals of First Instance in relation to matters which, if no arbitration had taken place, would have been within the jurisdiction of the justices of the peace, and to the Courts of Appeal in relation to matters which would have been within the jurisdiction of the Tribunals of First Instance.

Registration.

Submissions and awards must be registered.

The submission to arbitration must be registered. The fixed fee is 4 fs. 50 centimes.

The award must also be registered. The fixed fee, if it is subject to appeal, is 7 fs. 50 centimes. For *final* awards, by consent of the parties, the fee is 15 fs.

If the award be for payment of a sum of money, &c., an *ad valorem* duty of 50 centimes per 100 fs. is payable. If damages be ordered, the registration duty is two per cent. upon the amount.

CHAPTER XVI.

Set-Off.

Set-off.

A set-off is a means of extinguishing liabilities when two persons are reciprocally creditors of and debtors to each other.

Set-off cannot be effected unless the debts in question are either (a) definite sums of money; or (b) specific quantities of perishable goods, *e.g.*, wine, corn, &c., of the same kind.

Debts must be liquidated.

The debts must in all cases be liquidated. A claim genuinely contested cannot be admitted by way of set-off. If A. admits that he owes B. 1,000 fs., and A. claims that B. owes

* See "Dictionary of Legal Terms."

him a similar sum, which B. denies, and is prepared *bonâ fide* to resist, there can be no set-off between them. However, if against an admitted debt an unliquidated claim is put in by way of set-off, and can easily be made ascertainable and liquidated, the Court has power to postpone giving judgment on the admitted debt until the counterclaim has been definitely ascertained.

Unliquidated damages cannot be pleaded by way of set-off or counterclaim.

The decision as to the nature of the debt is left entirely to the discretion of the Court.

The debts must be alike payable. A debt now due cannot be balanced by a contingent debt accruing due in the future.

There is no set-off allowed between the amount which a Bankruptcy. creditor of a bankrupt owes to the bankrupt and that which the bankrupt owes to him, which has become payable by the legal operations of the bankruptcy proceedings.

In the case of *déconfiture*, or insolvency of a non-trader, Insolvency of non-trader, set-off is allowed.

The debts to be set-off must be those for which the parties are personally liable, and not such as they owe in the right of another, *e.g.*, debts due to a guardian, in his capacity as such, cannot be set-off against personal claims made on him.

A joint and several debtor cannot set off a debt due from the creditor to one of his co-creditors.

A stockbroker who, in the ordinary course of business, Stockbrokers. receives *nominative* shares for sale from another broker, cannot set off, against a claim by the owner of them, the balance due to him from the broker who transferred them. But if the shares were "to bearer," and the broker had no means of knowing the owner, the rule is otherwise.

A claim for alimony, or for payment of money declared by Alimony. law to be free from execution (*insaisissable*) cannot be met by any kind of counterclaim.

A simple contract debt may be set off against a debt secured by deed.

It must further be remarked, that not only may set-off be pleaded by a defendant in a cause, but, by mere operation of law, where the right to a set-off absolutely exists, the two debts are, *ipso facto*, extinguished. This is a legal fiction, which may operate even without the knowledge of the parties, *i.e.*, the law will presume that the debts are mutually paid and

extinguished by the existence of a set-off, which virtually cancels both obligations.

Interest. Set-off being equivalent to payment, interest ceases to run from the date at which it is established.

“ *Compensation* ” is the French term for set-off.

FOREIGNERS IN FRANCE.

THEIR RIGHTS, OBLIGATIONS, AND DUTIES.

I.—Rights.

In the early ages foreigners, except traders, were looked upon with disfavour in France, and subjected to heavy exactions. Property left by them upon death devolved upon the king or the lord. During their lives they were burdened with permanent or temporary taxes at the pleasure of the king, and according to the necessities of the times and the wants of the State.

Foreigners formerly looked upon with disfavour.

In 1790 these impositions were abolished, and a Decree of 13th April, 1791, put an end to all distinctions between Frenchmen and foreigners as to the rights of succession.

Decree of 1791.

The Civil Code modified these enactments, and by Art. 2 provided that foreigners should enjoy in France the same civil rights as those granted to Frenchmen by the treaties of the nations to which such foreigners belonged.

Civil Code.

Concerning the rights of succession, Arts. 726 and 912 admitted foreigners in the cases and in the manner only in which Frenchmen were themselves admitted, pursuant to the laws of the countries to which such foreigners belonged. But the Law of the 14th July, 1819, finally granted to foreigners the right to succeed to, to dispose of, and to receive property in the same manner as Frenchmen throughout the kingdom, without any conditions of reciprocity, upon the single condition that, in the event of the same succession being divided between Frenchmen and foreigners, the French co-heirs should take from the estate situate in France a portion equal to the value of any estate situate abroad from which they might be excluded in any manner, pursuant to laws or local customs.

In 1819, rights of succession to property granted to foreigners.

Rights of
foreigners at
the present
time.

At the present day, foreigners are assimilated with Frenchmen in reference to the rights of succession, of disposition, and of receiving gratuitously.

Authorisation
to foreigners to
establish
domicils in
France.

As regards other civil rights, they remain subject to the reciprocity established by Art. 11 of the Civil Code, explained *supra*. But a foreigner who has been permitted by the authorisation of the government to establish his domicile in France, enjoys all civil rights so long as he continues to reside there. The formality of authorisation must be *express*. It is granted upon application in certain cases. It cannot be dispensed with by the fact of a foreigner having abandoned all idea of returning to his own country, having always resided in France, and having always accomplished there all the acts relating to civil life.

De facto
domicil.

But, however, the absence of authorisation does not prevent a foreigner habitually residing in France from acquiring a *de facto* domicil, attended with certain effects, though less extensive than those conferred by a grant of civil rights. Thus, a *de facto* domicil, governing the succession to personal property of which he dies intestate, may be acquired in France by a foreigner who has not obtained the government authorisation as the condition for the enjoyment of full civil rights.

Civil rights.

Droits civils, or civil rights, include, amongst others, family rights, marital and paternal authority, rights of guardianship and trusteeship, the privilege of compelling a foreign plaintiff to give security for costs, called in France *caution judicatum solvi*, and that of suing any foreigner, in personal actions, in the French Courts.

Security for
costs.

The latter right applies to a foreigner authorised to establish his domicil in France, although the defendant sued by him may be of the same nationality.

Contracts by
foreigners.

A foreigner, not authorised as above to fix his domicil in France, and notwithstanding the non-existence of any diplomatic treaty establishing reciprocity between Frenchmen and citizens of his own country, can legally enter into all contracts with the object of the transmission of a thing or of a right. He can enter into all mercantile contracts, such as agreements for sale, purchase, exchange, hiring, agency, partnership, warehousing and the like.

Ownership by
foreigners of
French ships.

But no foreigner, unless enjoying civil rights, can own a French ship; and the crews of French ships must be composed of but a small proportion of foreigners.

A foreigner cannot be a stockbroker, a *commissaire priseur* or licensed auctioneer, a consul, a broker other than a merchandise broker, a judge of the Tribunal of Commerce, a *prudhomme*, an elector in respect to voting upon the appointment of the judges in the Tribunal of Commerce, a witness to any *acte public* or formal legal proceeding or deed, such as a notarial deed, a protest, an execution of property, a will, &c.

Disabilities of
foreigners.

But a foreigner can be appointed *consular agent*, and can also act as an arbitrator or expert. He can take out a patent and proceed against infringers of trade marks, drawings and models registered by him. He can also suppress the piracy of his name in commerce.

He possesses the same rights as a Frenchman as regards works published by him in France.

Obligations and duties of Foreigners in France.

The laws of police and safety bind all persons inhabiting French Territory (Art. 3 of the Civil Code). Thus, a foreigner, although not authorised to establish his domicile in France, where he carries on trade, can, if he suspends his payments, be adjudicated bankrupt in France. (*See chap. on "Bankruptcy."*)

Obligations and
duties of
foreigners.

Crimes and misdemeanours committed by foreigners in France, whether to the prejudice of Frenchmen or foreigners, are punishable by the French Courts.

Crimes and
misdemeanours.

The French tribunals have jurisdiction to punish crimes or offences committed on board a foreign merchant vessel stationed in a French port, even by the crew amongst themselves. (Cassation, 25th February, 1879.)

Foreigners must conform to the local regulations of police customs and navigation in the ports and harbours of French territory.

Foreigners can be expelled from French territory by the Minister of the Interior, upon grounds of order or public policy.

Foreigners can
be expelled from
France.

The French laws governing the capacity of persons are *not* applicable to foreigners, who continue in this respect in France to be governed by the laws of their respective countries.

ACTIONS BETWEEN FRENCHMEN AND FOREIGNERS.

1.—Case in which a Foreigner is Plaintiff.

Actions between Frenchmen and foreigners.

A foreigner having a claim against a Frenchman, can in every case bring his action in the French Courts. It matters not whether it relates to a contract entered into by the Frenchman in France or in a foreign country (Civil Code, Art. 15). It is equally unnecessary that reciprocity should have been stipulated by the country to which the foreigner belongs. Natural-born French subjects and naturalised Frenchmen are placed upon the same footing, as are also partnerships, Companies and individuals.

Security for costs.

In civil cases a foreign plaintiff must furnish security for costs, unless he possesses realty in France of sufficient amount. (*See* chap. on "Security for Costs"). But in mercantile cases, as is fully explained *infra*, no security need be given.

2.—Case in which a Foreigner is Defendant.

Foreign defendant.

Any Frenchman, naturalised or otherwise, having a claim against a foreigner, can sue him in the French Courts (Civil Code, Art. 14). It is even so when, at the time of entering into the contract, the foreigner may have been ignorant of the nationality of the plaintiff. (Court of Appeal, Paris, 3rd June, 1872).

When and where foreigners can be sued.

The foreigner can be sued as above whether he resides in France or not, and whether the contract was entered into or the act complained of took place in France or abroad. These rules apply to foreign firms, Companies and corporations.

Rule as to domicile.

The fact of a Frenchman possessing a domicile in the foreign country at the time when the contract sued upon was entered into, and his retaining such domicile without abdicating his status as a French subject, affords no obstacle to the application of the preceding rules.

Transfer of claims.

If a Frenchman having a claim against a foreigner sells or transfers such claim to another Frenchman, the French Courts will entertain an action by the latter against the defendant. The benefit of Art. 14 of the Civil Code follows the claim (Court of Cassation, 5th Nov., 1873); but it is considered that if the transferee were a foreigner he could not bring his action in France.

A foreigner who accepts a bill of exchange abroad, of which a Frenchman is the holder at maturity, pursuant to a regular indorsement, can be sued in the French Courts for payment. This rule has been established by numerous decisions.

Foreign acceptor of bill of exchange can be sued in France.

A Frenchman, the holder of a bill pursuant to a blank indorsement, possesses the same right, provided that the law of the country in which the instrument was drawn recognised the validity of blank indorsements as transfers.

Blank indorsements.

Mode in which Foreigners must be sued.—Practice.

Service of process upon foreigners amenable to the jurisdiction of the French Courts must be effected at their domicile, or in default of domicile, at their residence in France. If they possess neither domicile nor residence upon French territory, service must be effected at the office of the *Procureur* of the Republic attached to the Court in which the action is brought.

Practice.

Service of process on foreigners, how effected.

If the copy of the *assignation* or writ be left at the temporary residence of a foreigner in France after his departure, the service is void.

The time for appearance varies according to distance.

Time for appearance.

The general rules of procedure are followed in actions against foreigners (*see* chap. on "Tribunal of Commerce.")

Writs are not served personally in France, as in England. They are left at the residences of the parties by *huissiers*.

Actions between Foreigners.

It is a settled rule that, in all cases, civil or commercial, the French Courts are incompetent to adjudicate between foreigners who are neither domiciled nor resident in France, in relation to contracts entered into, and to be carried into execution, in foreign parts.

Actions between foreigners.

French Courts incompetent to adjudicate.

EXECUTION OF ENGLISH AND FOREIGN JUDGMENTS IN FRANCE.

Every judgment emanating from a French Court is considered to create a presumption of truth which permits of no question being raised in reference to the points decided thereby. Such a judgment confers upon the successful party the right to attach or seize the present and future property of his debtor; and further, if necessary, to call in the public force to

Execution of English judgments in France.

General rules.

compel his adversary by legal means to carry into execution the obligations imposed upon him by the judgment. The above rights appertain to French judgments alone, subject to the explanations which follow.

Diplomatic treaties.

In some cases diplomatic treaties provide for the execution in one State or country of judgments given in another.

Public policy.

However precisely such treaties may be drawn, the execution in France of foreign judgments is not permitted if they violate the principles of public policy. The French Courts in such a case have no right to investigate whether the judgment has been properly rendered, but they are required to decide that it contains nothing contrary to public morals or order.

Absence of treaty.

In the absence of a treaty, it is a principle that no execution can issue upon a foreign judgment in France until the judgment has been declared executory by a French Tribunal.

Mode of executing foreign judgments.

Judgments rendered by foreign Courts can only be rendered executory in France in the mode and in the cases provided by Art. 2,123 of the French Civil Code.

A fresh action must be brought in France upon the foreign judgment; and the adverse party must be served with an *assignation* or writ, calling upon him to show cause why the judgment should not be declared executory.

The application cannot be made *ex parte* by petition.

Actions upon foreign judgments are brought in the Civil Tribunals.

The decision of the Tribunal in these actions must be delivered in public. Actions upon foreign judgments must be entered in the Civil Tribunals of First Instance. But the actions can be brought direct in the Courts of Appeal when the foreign judgment sought to be executed was delivered by a Court abroad of corresponding rank.

The French Tribunals have power to render executory in France foreign judgments against foreigners as well as against Frenchmen.

3.—Of the Execution, in France, of English Judgments.

English judgments liable to revision in France.

There exist between France and various States of Europe—viz., Italy, Switzerland, and the Duchy of Baden and Alsace-Lorraine—diplomatic treaties which govern the mode of procedure to be followed in order to render executory in France judgments rendered by the Tribunals of those States. Such treaties stipulate a reciprocal right as regards decisions rendered by French Tribunals; but no treaty of this nature has as yet been concluded with England, and therefore judgments

recovered in English Tribunals cannot be executed in France without being submitted to revision by the French Tribunals, which revision may affect both the substance and the form of the decision.

The bankruptcy of a person adjudicated bankrupt by the decision of an English Court is recognised by French Tribunals without the English adjudication being declared executory in France. An English trustee may therefore establish his quality as trustee by the simple production of the adjudication made by the English Court; but if he desires to exercise, by virtue of such adjudication, the right of administration over the property situated in France of the bankrupt, and if he should meet with opposition on the part of third persons to the exercise of his rights, he will be obliged, in order to overcome such opposition, to request that the French Tribunals render the English bankruptcy adjudication, which invested him with the functions of trustee, executory.

English bankruptcy adjudication, how far recognised in France.

Any party who desires to render executory, by the medium of the French Courts, a judgment recovered abroad, must with this view summon the condemned party before the Civil Tribunal; and previous to so doing, it is necessary to submit the judgment rendered abroad to the formality of *enrégistrement*, or registration. The amount of duty on such registration payable to the Treasury varies according to the nature of the judgment in question, and is the same as that to which French judgments are liable.

Foreign judgment must be registered in France.

The plaintiff must establish, both by documents and *certificats de coutume* (legal certificates), that the foreign judgment has been legally given by a competent Tribunal, and that it is final according to the laws of the country in which it was delivered.

Evidence.

The Civil Tribunal is alone competent to give executory force to foreign judgments, whether the question in litigation be civil or commercial.

If the defendant be French, the Tribunal may require that the whole cause be pleaded over again before it, and may partially modify the decision of the foreign Court, or even reverse it completely, and discharge the defendant from the sentence pronounced against him. Some authors even maintain that the French Tribunals may receive the counterclaim of the defendant, and while discharging him from the judgment pronounced against him by the foreign Court, may make

French defendant. Uncertainty at present prevailing in France in reference to the execution of foreign judgments generally.

such an order in respect to the case and against the plaintiff as it may deem equitable; but this opinion is controverted, and the Tribunals in practice are not more agreed than writers on the subject. As we have previously said, no formal legal text governs this portion of the French law, which is abandoned to the controversy of authors and to the arbitrary interpretation of the Tribunals.

Rights of
foreigners
reciprocally.

The execution of a judgment can be demanded by a foreigner against a defendant, being also a foreigner, whether of the same nationality as himself or of a different nationality. The French Tribunal cannot re-try the action, but should assure itself that the judgment which is submitted to it has been regularly rendered in the proper form; such is, at least, the opinion of those authors whose decision carries the most weight, but the question is much controverted, and certain decisions have even recognised the right of the French Tribunals to revise such a foreign judgment.

Execution in
France of arbi-
trators' awards
rendered
abroad.

Arbitrators' awards rendered abroad, viz., out of France, between foreigners or between French subjects and foreigners, do not, as is the case with judgments, require to be submitted for revision to the French Courts, to enable execution to be issued upon them. In the case of arbitration, it is considered that the partiality of foreign Courts is not to be feared, as the decision in question has been given by the authority chosen by the parties themselves voluntarily. The only formality necessary is an application to the president of the Tribunal to grant an **exequatur**, and the same procedure is followed as in French arbitrations.

Practical Instructions.

Practical
instructions.

A party seeking to obtain execution of an English judgment in the French Courts, must forward to his solicitor in France a certified copy of the English judgment, together with a complete statement of the case, and if necessary the entire documentary or written evidence used in obtaining the decision in England.

A writ is then issued in France, and the case set down to await its turn for hearing. The same rules of procedure are followed as in ordinary cases. Actions for the execution of foreign judgments are adjudicated upon in the Civil Tribunals, as we have explained *supra*, subject to appeal; but provisional execution can in certain cases be issued, subject to the conditions referred to in another part of this work (*see* Index).

BANKRUPTCY.

General Points.*

There is no special Bankruptcy Court in France. The Jurisdiction of Tribunals of Commerce have sole jurisdiction in bankruptcies, Tribunals of Commerce. subject to appeals to the ordinary Courts of Appeal.

The present law relating to Bankruptcy was passed in 1838, Law of 1838. and has held its ground since that time with few modifications. Taking the whole of the bankruptcies in France, it is calculated that the creditors receive a mean dividend of nearly 20 per cent.*

* FAILURES IN FRANCE.—A report recently issued on the administration of justice during 1878, gives a list of the bankruptcies that occurred during 1878, amounting to 6,021, which exceeded those of 1877 by 541, and those of 1876 by 829. The following is the proportion in which the various industries participated in the disasters :—Textiles, 290 ; wood and timber, 232 ; metals, 239 ; leather, 235 ; chemical works, 94 ; pottery, 49 ; building trades, 250 ; jewelry, 296 ; provisions, 2,017 ; clothing trades, 1,038 ; furniture, 142 ; business, 114 ; traffic, 170 ; hotel and inn-keeping, 383 ; sundry, 472. Of this list 2,435 were adjudicated bankrupts on their own declaration, and the remainder at the instance of creditors. It is a matter of some interest to know what was the result of all these bankruptcies. A dividend of 10 per cent. was realised in 997 cases, of from 10 to 25 per cent. in 1,555, 26 to 50 per cent. in 109, and from 76 to 99 per cent. in 24. In 282 cases only the creditors received nothing. The liabilities did not exceed 5,000f. in 330 failures, and varied from 5,000f. to 10,000f. in 527 ; from 10,000f. to 50,000f. in 1,562, from 50,000f. to 100,000f. in 435, while they exceeded this amount in 469 cases.

FAILURES IN ENGLAND.—In England, in 1879, there were altogether 13,132 cases of bankruptcy, arrangement or composition ; but of the 1,156 bankruptcies, 79 were annulled on acceptance of composition or scheme of settlement under sec. 28, and 70 more for various other reasons, leaving only 1,000 cases, or about seven per cent. to which the more important provisions of the Act for preventing abuses by insolvent debtors and professional agents applied. The other 12,000, or 93 per cent., escaping the provisions of the Act which refer to the examination

Three kinds of bankruptcy.

There are three degrees of bankruptcy, 1. Ordinary bankruptcy called *faillite*; 2. *Banqueroute simple*, a species of fraudulent bankruptcy; *Banqueroute frauduleuse*, viz., fraudulent bankruptcy of a more heinous character and involving severer penalties.

Only traders can be bankrupts.

Traders only can be adjudicated bankrupt. Non-traders cannot be made bankrupt except in relation to habitual acts of trade or mercantile dealings.

Insolvency of non-traders.

Non-traders who do not meet their engagements, and whose assets are less than their liabilities, are said to be in a state of *déconfiture* or insolvency. They still remain governed by the rules of civil law. The provisions of bankruptcy do not apply to them in any way. Clerks, artisans and workmen cannot be adjudicated bankrupt. Minors, prodigals* and married women can only be declared bankrupt in certain cases.

Foreigners.

Foreigners residing in France are subject to the French bankruptcy laws. A trading firm with its chief establishment abroad, and with a branch only in France, can be declared bankrupt in that country.

Suspension of payments the criterion of bankruptcy.

Bankruptcy in France is constituted by the fact alone that the debtor has suspended his payments, but a judgment is indispensable in order to give publicity to the bankruptcy, and to determine the date at which it is deemed to commence.

The question as to what constitutes suspension of payments is one for the Court, viz., for the Tribunal of Commerce in the first instance.

Adjudication after death of debtor.

A debtor can be adjudicated bankrupt *after his death* upon two conditions, viz., 1. The suspension of payments must be proved to have existed previous to his death; 2. The petition or application to obtain the adjudication of bankruptcy must be presented or made within one year from the date of the death of the debtor, but the adjudication can be validly made after the expiration of the year.

and discharge of a bankrupt, and to the accounts, charges and conduct of agents employed.

The total number of compositions in 1870 was 1,116. Of these there were 565 over 7s. 6d. in the Pound, and only 76 under 1s.; whilst in 1879 the total was 4,809, of which the best class numbered 513 (52 fewer than in 1870), but the worst numbered 1,056, just *fourteen times* as many as in the earlier year.

* *i.e.*, persons declared incapable of managing their own affairs on account of their extravagance, and subjected to a *conseil de famille*, without whose authority they cannot act in reference to their property.

OF THE ADJUDICATION.**Jurisdiction of the Courts.**

We have already stated that there exists no special Bankruptcy Court in France, and that the Tribunals of Commerce in the various districts adjudicate in bankruptcies.

The Tribunal having jurisdiction is that of the domicile of the debtor, and in the case of a partnership, that of the district in which it has its *de facto* chief office. What Tribunal has jurisdiction.

Two or more simultaneous and separate bankruptcies can be declared in cases where the debtor has carried on trades in different localities.

A foreigner can be declared bankrupt in France even after having been adjudicated bankrupt in his own country or elsewhere.

OF PARTIES ENTITLED TO PETITION FOR BANKRUPTCY.

The debtor himself should present a petition for bankruptcy within three days from ceasing his payments. In default, one or more of the creditors can obtain an adjudication, or the Tribunal of Commerce can, *ex officio*, declare a debtor bankrupt when his insolvency has become notorious. Persons entitled to petition.

In the case of a creditor, the application is made by way of petition, *ex parte*, and upon cause being shown, a judgment by default, declaring the bankruptcy, is given; but the debtor can apply to set it aside, and can sue the petitioner for damages if an adjudication has been obtained against him without due cause. The creditors can appeal if their petition for adjudication is rejected. Appeals lie to the ordinary Courts of Appeal. Application ex parte.

FORM OF ADJUDICATION.

The adjudication is declared by a judgment given in public.* Foreign judgments.

An English or foreign adjudication of bankruptcy can be rendered executory in France in the same manner as any other judgment.

Foreign trustees can, however, exercise their rights in France without obtaining an *exequatur*.

Foreign adjudications are declared executory by the Civil Tribunals only, to the exclusion of the Tribunals of Commerce.

* See 107, for form of judgment declaring a bankruptcy.

OF THE COMMENCEMENT OF THE SUSPENSION OF PAYMENTS.

Adjudication fixes date of suspension of payments.

The date at which the suspension of payments is deemed to have commenced is fixed by the Tribunal at the time of decreeing the adjudication, if it is in possession of sufficient information, or by a subsequent judgment rendered upon the report of the *juge-commissaire*.

Importance of this retrospective effect of the adjudication.

The above decision is of extreme importance, as the validity of certain acts executed by the bankrupt depends upon whether such acts took place previously or subsequently to the date from which the bankruptcy is considered to commence, as will be fully explained *infra*.

The Tribunal, in fixing the date, is guided by the facts and evidence.

Should no fixed date be stated, the bankruptcy is deemed to commence from the date of adjudication. In the parallel case of a bankruptcy declared after the death of a debtor, it would be deemed to commence at the date of his death.

EFFECTS OF THE ADJUDICATION.

1. Upon the person of the Bankrupt.

Disabilities of the bankrupt.

The adjudication deprives the bankrupt of certain privileges; thus, he cannot present himself at the Bourse, and is debarred from discount at the Bank of France. He cannot act as a stockbroker or other broker, except a goods broker. He is deprived of the exercise of his rights as a citizen even after obtaining his discharge, and he may not fulfil any political function, such as become a member of the Chamber of Deputies, or of a *Conseil Général* or *District Conseil*. He cannot be a municipal councillor, a mayor, a juryman, an elector, &c. But he preserves the enjoyment of ordinary civil rights. He can consequently validly contract with third parties, with liberty to the trustees or *syndics* to disclaim such contracts and to prevent the property which they sold from being affected by them. Thus, if a bankrupt purchases goods of a third party, he cannot plead his non-capacity in order to avoid payment of the price, but the *syndics* can resist any proceedings taken against the goods belonging to the bankrupt, as such goods are their security, and the bankrupt who has been deprived of the administration of his property cannot dispose of them. The vendor would be compelled to wait until the close of the bankruptcy to enforce payment. Partnerships

of which the bankrupt was a member are dissolved by the bankruptcy.

2. Upon the property of the Bankrupt.

Pursuant to the provisions of Art. 443 of the Code of Commerce, the adjudication deprives the bankrupt of the administration of the whole of his property, even of that which may accrue to him during the bankruptcy. Bankrupt loses control over his property.

Subsequent to the adjudication, all actions relating to his realty or personalty must be brought by or against the syndic. Rights of action pass to syndic.

All transactions entered into by the bankrupt, either with or without consideration, after the adjudication, are void as against the creditors.

ADMINISTRATION OF THE ESTATE.

The bankrupt is deprived by law of the administration of his property, and this deprivation dates from the adjudication.

The bankrupt can, however, commence to trade anew. Right to trade preserved. Fresh creditors in respect of such subsequent trading cannot prove against the estate, and the creditors in the bankruptcy cannot interfere to prevent such trading.

The bankrupt can also bring certain actions in his own name. For instance, he can sue for damage to his honour or reputation. What actions can be brought by bankrupt.

He can proceed against infringers of his patent-rights, &c., but the syndic can intervene and claim the damages for the benefit of the estate.

He can recover sums due to him in relation to transactions entered into by him since the bankruptcy.

EFFECTS OF THE ADJUDICATION UPON DEBTS DUE BY THE BANKRUPT.

All moneys owing by a bankrupt, but not yet accrued due, become payable immediately upon the adjudication. Bankrupt's debts become payable immediately.

Interest upon debts due by the bankrupt ceases to run, as regards the body of creditors, from the adjudication, except as regards debts which are secured by privilege, by a pledge, or by a mortgage. Interest.

It is a principle in bankruptcy that the creditors should be placed upon an equal footing. To arrive at this result, it is enacted that from the date of the judgment declaring the bankruptcy, all *dettes passives*, or debts owing by the bankrupt, become forthwith payable, and thus no creditor can be excluded,

on account of his debt not having accrued due, from taking part in the operations of the bankruptcy, and receiving dividends when distributed (Code of Commerce, Art. 444).

This rule is applied to the bankrupt only, and not to parties jointly and severally liable with him as sureties.

Landlord.

The landlord of a house leased to the bankrupt can claim security, or the payment of a portion of the rent as fixed by Art. 550 of the Code of Commerce, revised by the law of 12th February 1872.

Vendor to bankrupt for future delivery

The same right belongs to the vendor of goods the delivery of which is to take place at a future time. Such vendor, after the adjudication, can demand security for payment of the price of the goods at the term of delivery, and in default of the syndic furnishing such security, he can claim to have the contract cancelled.

The bankruptcy of one of the parties to a bill or note gives no right of action against the other parties thereto. Formerly the parties in such an event were compellable to pay immediately, or to give security.

Bills of exchange.

At the present time security is required to be given in the following cases: as regards bills of exchange, in the event of the bankruptcy of the acceptor, or the non-acceptance of the bill, by the drawer; and as regards promissory notes (*billets à ordre*), in the case of the bankruptcy of the maker.

Promissory notes.

Effect of the suspension of payments upon the transactions and dealings of the Bankrupt since the date thereof, and within the 10 days prior thereto.*

We have already seen that the adjudication deprives the bankrupt, from its date, of the administration of his property, and that all actions relating to his realty or personalty must be brought by or against the syndics.

All dealings by the bankrupt entered into after the date of the adjudication, whether gratuitously or for valuable consideration, are therefore void as against the creditors, as well as all judgments against him after such date, unless they relate exclusively to his person.

Acts to defraud creditors.

The *syndics* have also the incontestable right of impeaching all acts of the bankrupt in fraud of his creditors which may have been committed by him at any period. (Court of Cassation, 17th July, 1861).

* These provisions are very important, and special attention is directed thereto.

A distinction is established between conveyances *à titre gratuit* (gratuitous) and conveyances *à titre onéreux* (for valuable consideration). Conveyances with and without consideration.

The first are void, from the fact of their having been carried into effect by the bankrupt in the interval which elapsed between the cessation of payments and the adjudication, or even within the ten days which preceded the cessation of payments.

The second are valid if the third parties who contracted with the bankrupt were ignorant of his insolvency at the time of entering into the contract.

CONVEYANCES OF PROPERTY GRATUITOUSLY.

A debtor who has stopped payment, or who is on the point of so doing, cannot gratuitously dispose of any portion of his estate. Such acts of generosity would be a fraud upon the creditors, and would not be upheld, notwithstanding that the donees might be ignorant of the insolvency of the donor. Disposition of property.

The provisions of Art. 446 of the Code of Commerce are absolute, and apply to both realty and personalty, and to pretended gifts disguised under the form of conveyances for valuable consideration.

PAYMENT OF DEBTS NOT ACCRUED DUE.

It is not customary in commerce to pay debts before maturity. A trader who pays a debt by anticipation, upon the eve of suspending payment, is presumed to have yielded to the pressure of the creditor or to a wish to favour him to the prejudice of the general body of creditors, and this presumption assumes greater force if the payment, instead of being made in cash, takes place by a sale or a transfer, or by similar means. Anticipated payments.

The above considerations gave rise to the enactment that the payment of all debts not accrued due by the bankrupt since the period fixed as that of the suspension of payments, or within the ten days preceding, either in cash or by transfer, sale, set-off, or otherwise, should be void. Limit of 10 days prior to bankruptcy.

A bankrupt cannot, after his suspension of payments, or within the ten days prior thereto, legally pay money by way of security into the hands of a drawee of a bill of exchange which has not matured. (Court of Cassation, 17th December, 1850.) But the drawee, although compelled to refund such payment to the estate, cannot cancel the payment he may himself have

made to the holder of his acceptance, as he has but discharged his own debt. (Court of Cassation, 22nd December, 1869.)

Delivery of
goods.

The word *dette*, employed in Art. 446, has a general signification. It includes every species of obligation, also an engagement to deliver a thing or to pay a sum of money. Thus, a trader who within ten days before his suspension delivers a quantity of corn or wine, which he was only bound to deliver at a future date, is considered as having made an anticipated payment, and such transaction is void.

Payments with
discounts.

The fact of a payment being made in anticipation under discount does not render it valid; at least the majority of the decisions are to this effect.

In all cases in which the payments made are declared void, the creditor must refund the proceeds to the syndic for the benefit of the creditors. He must also pay interest upon the sums illegally received by him from the date of receipt.

PAYMENT OF DEBTS ACCRUED DUE OTHERWISE THAN IN CASH OR BILLS.

Debts already
due.

The presumption of fraud, which renders payment made by the bankrupt in anticipation void, does not apply to debts which have accrued due at the time they are discharged.

It can happen that, within the ten days which preceded the suspension of payments, or even in the interval which elapsed between that period and the adjudication, the bankrupt may have paid *bonâ fide* debts to third parties who were ignorant of his real position.

Bona-fide
payments not
set aside;

It would be unjust to compel restitution of such payments, and the *syndic* cannot impeach or set them aside, unless he can prove that the payee had notice of the insolvency of the debtor at the time he received payment.

but must be in
cash or bills.

A settlement, however, so made in any other manner than in cash or bills, is void, whether the creditor had notice or not. (Court of Appeal, Paris, 28th June, 1877.) As a consequence of Art. 446, the transfer by a debtor of a claim in extinguishment of a debt within the ten days preceding his bankruptcy is void.

Payment by
bankrupt's
debtor.

A payment made by a debtor of the bankrupt to a creditor of the latter is void under the like circumstances.

Payment in goods is void whatever may be the motive alleged to justify it.

A debtor may not return goods for which payment has not

been made, for he is indebted in the price thereof alone; but it would be otherwise if he restored goods which he had obtained by fraud, as he would then be liable to their restitution in kind. (Court of Appeal, Paris, 11th Dec. 1857.)

Payment by bills is placed in the same category as payments in cash, as in commerce bills in circulation are considered as cash.

OF MORTGAGES AND CHARGES UPON THE BANKRUPT'S PROPERTY IN RESPECT OF DEBTS PREVIOUSLY CONTRACTED.

It is enacted that all conventional and judicial mortgages Mortgages and other charges. (*hypothèques conventionnelles et judiciaires*), and all *droits à antichrèse*, or charges upon the property of the debtor, executed within the 10 days preceding the suspension of payments to secure debts previously owing, are void.

Mortgages and charges executed at the time the contract No notice. is carried out are valid if the creditor had no notice of the insolvency of the debtor.

If a charge is executed to secure a debt contracted at the time and one previously owing, it is void as regards the prior debt.

Hypothèques judiciaires arising from judgments against the debtor are placed upon the same footing as *hypothèques conventionnelles*, because they result from the debtor's own act and might be based upon fraud. *Hypothèques judiciaires.*

OF PAYMENT OF DEBTS ACCRUED DUE IN CASH OR BY BILLS, AND OF CONVEYANCES "À TITRES ONEREUX" (FOR VALUABLE CONSIDERATION).

Art. 446 of the Code of Commerce enumerates the various Acts from which fraud is presumed. acts which are accompanied with a presumption of fraud by reason of their special nature, and of the short period elapsing between their execution and the bankruptcy of the debtor.

Such acts are voidable if it can be shown that the parties had notice of the insolvency of the debtor at the time they were carried into effect.

Third parties contracting with the debtor previous to his Onus of proof of notice of insolvency. bankruptcy are presumed not to have notice of his insolvency. The onus of proof is upon the *syndic* who seeks to annul transactions carried into effect in fraud of the body of creditors.

As regards *conveyances* and *compromises* for valuable Valuable consideration for deeds or compromises. consideration, other than payments, notice of the insolvency of the

debtor is not sufficient to raise a presumption of the *mauvaise foi* of the contracting parties. In addition to the above, the *syndic* must prove that the acts he is seeking to render void have prejudiced the general body of creditors. If the holder of a bill of exchange receives payment before maturity from a debtor within the prohibited periods, he must refund the proceeds to the *syndic*. If he accepts payment at maturity, otherwise than in cash, for instance, by other bills or goods, he must deliver them to the *syndic*.

Art. 449.

Art. 449 of the Code of Commerce provides, that in cases where bills of exchange have been paid by the bankrupt after the period fixed as that of the suspension of payments, and before the adjudication of bankruptcy, actions for reimbursement or restitution can be instituted only against the party for whose account the bill was drawn, and in the case of a promissory note, against the first indorser only. But in either case proof that the party called upon to reimburse the amount of the instrument was aware of the suspension of payments at the period of the creation thereof must be made.

Interest on sums recovered by the *syndic*.

In the event of parties being ordered by the Courts to convey property to the *syndic*, pursuant to Art. 447, they are chargeable with interest upon sums improperly received by them at the rate of 6 per cent. per annum, calculated from the date of such receipt.

OF THE APPOINTMENT OF THE JUGE-COMMISSAIRE (REGISTRAR).

Juge-Commissaire.

By the judgment declaring the bankruptcy, the Tribunal of Commerce appoints one of its members to the office of *juge-commissaire*, to represent the body of creditors and to superintend the operations of the *syndic* or trustee. (See Arts. 451 to 454 of the Code of Commerce.)

OF THE PLACING OF THE SEALS UPON THE PROPERTY OF THE BANKRUPT.

Sealing up of bankrupt's effects.

After the adjudication, the first measure adopted is the placing of seals upon the warehouses, safes, books, papers, furniture and effects belonging to the bankrupt.

If the assets are small, the *juge-commissaire* can order this operation to be dispensed with.

Partnership.

The seals are affixed by the justice of the peace.

In the case of the bankruptcy of a partnership firm, the seals can be affixed at the private residences of the partners.

OF THE IMPRISONMENT OR DETENTION OF THE BANKRUPT.

The Court can order the bankrupt to be arrested and confined in a debtor's prison, or to be given into the custody of an officer of police. Arrest of debtor.

This measure, as regards ordinary bankrupts, is, however, rarely resorted to. At the present time it is confined to pecuniary penalties pronounced by the criminal, correctional, or police Courts.*

OF THE FIRST COSTS AND EXPENSES OF A BANKRUPTCY.

When the assets at the outset do not suffice for the expenses of the adjudication and the publication thereof, the amount requisite is advanced by the public treasury upon an order of the *juge-commissaire*. Preliminary costs.

This advance is reimbursed, as a first charge, out of the first assets recovered by the *syndic*.

OF THE APPOINTMENT OF THE "SYNDICS" OR TRUSTEES, AND OF THEIR DUTIES.

In the principal cities the custom of appointing **Professional syndics** or trustees has arisen. The syndics. Until the last few years, the Tribunal of Commerce of Paris settled and revised annually the list of *syndics de faillites*. Their number was not limited, and they did not constitute a corporate body. Since the passing of two resolutions on the 30th January and 3rd February, 1876, bankruptcy trustees have in Paris been organised on a new system. They have received authority to form themselves into a corporation called the *Compagnie des Syndics de faillites près, le Tribunal de Commerce de la Seine*. But such authorisation was granted to them upon the condition, amongst others, of giving security, and of creating a guarantee fund by mutual subscription, and this fund at the present time amounts to over 1,000,000 fs. (£40,000).

The number of *syndics* in Paris is limited to 20, who monopolise the whole of the bankruptcy business of the department of the Seine. They are governed by a chamber of

* The law upon imprisonment for debt in France will be found fully explained in another part of the present treatise. (Appendix.)

Trustees.

discipline, whose president is appointed each year by the president of the Tribunal of Commerce.

The above system has now been working about six years with satisfactory results, and it is probable that the other departments in France will adopt the same organisation.

There are no proceedings in French law analogous to those relating to composition and liquidation by arrangement in the Bankruptcy Act, 1869, in England.

A composition can be proposed to the creditors *after the adjudication* of bankruptcy (*see chapter on Concordat*); but such offer is subject to approval and confirmation by the Tribunal of Commerce after a report has been made by the *juge-commissaire* on the character of the bankruptcy, and his opinion tendered as to the admissibility of the offer.

DUTIES OF SYNDICS.

Accounts.

System of accounts.

In Paris bankruptcy *syndics* are subjected to a prescribed mode of procedure, and to a system of checking of accounts, denominated *comptabilité centrale des faillites*.*

This system was organised in 1850, and its object is to register day by day the operations carried through by each of the *syndics* in the various bankruptcies in which he is engaged. These daily declarations are entered up in an account-sheet containing debit and credit columns, showing not only receipts and disbursements, but also all moneys paid into and withdrawn from the *caisse des dépôts et consignations*. At the end of the month there are as many sheets filed as there are days in the month, with the exception of *fête* days. The debit and credit amounts on each sheet are carried forward to a general or *recapitulation* sheet, which shows the balance in respect of which the *syndic* is a debtor or creditor to each estate.

The chief accountant of the tribunal keeps a special ledger for each *syndic*, in which a separate account is opened with each bankruptcy in which the *syndic* acts. *Syndics* are also required to file a balance-sheet each month ("*Manuel Pratique des Tribunaux de Commerce*," p. 558).

The above system of accounts permits interested parties to exercise a daily check upon the dealings of *syndics*, and also facilitates the surveillance of the *juge-commissaires*.

A decree passed on the 25th March, 1880, has rendered the control over *syndics* still more efficacious, inasmuch as a special

* Similar rules might advantageously be adopted in England.

register is ordered to be kept at the *greffe* of each Tribunal of Commerce, and of each Civil Tribunal adjudicating commercially, upon which all acts and transactions of the *syndics* in relation to each bankruptcy must be inscribed, and a *résumé* of such register, which is entered up under the special superintendence of the *juges-commissaires*, must be forwarded by the *greffier* to the *procureur général*. Control over trustees.

In this manner the management of the *syndics* is subjected to a double control, that of the *procureurs généraux* and that of the *juges-commissaires*.

Syndics, in the exercise of their duties, are considered as officials acting in the public service, and are protected by the provisions of Art. 224 of the Penal Code, pursuant to which, threats or abuse offered to *officiers ministériels* are punished by fine and imprisonment.

REMUNERATION OF SYNDICS IN BANKRUPTCY.

When the *syndics* have rendered their accounts, they are entitled to receive a sum of money as remuneration, which is fixed by the tribunal upon the recommendation and report of the *juge-commissaire*. Remuneration of syndics in France.

The remuneration given is proportionate to the importance of the bankruptcy, the difficulties encountered in the winding-up, and the results obtained.

Provisional as well as definitive *syndics* receive remuneration for their services.

The *syndics* present a petition to the *juge-commissaire*, setting out the sum claimed by them and their reasons for its admission. Such petition can be contested by the bankrupt and by the creditors, and the claim is adjudicated upon by the Tribunal of Commerce, subject to appeal, if the amount claimed as remuneration exceeds 1,500 fs. (£60).

The word *syndic* signifies trustee. In practice one *syndic* only is appointed, notwithstanding that the plural is employed in the text of the French law of bankruptcy.

The power of appointing, replacing and maintaining the *syndics* appertains to the Tribunal of Commerce alone. The creditors are not consulted in the choice.

Their duties consist principally in the administration of the assets in the double interest of the bankrupt and of the creditors, and in winding up the estate upon the most favourable conditions, and as speedily as possible.

OF THE ADMINISTRATION OF THE BANKRUPTCY UP TO THE "CONCORDAT" OR DISCHARGE, OR UP TO THE "UNION" OF THE CREDITORS.

The definition of the word "union" will be found in the present chapter. (*See p. 100.*)

As soon as the *syndics* enter upon their duties, they are called upon to take certain protective measures or operations in the interest of the creditors, such as :—

1. The sealing up of the property of the bankrupt.
2. The sale of perishable or burdensome objects.
3. The carrying on of the business of the bankrupt.
4. The getting in of debts shortly accruing due.
5. Registering a charge upon the realty of the bankrupt in the name of the general body of creditors.
6. The doing of all general acts for the preservation of the rights of the bankrupt against his debtors.

Letters addressed to the bankrupt are taken possession of by the *syndic*.

Allowance for support of bankrupt.

The bankrupt can apply for an allowance for the subsistence of himself and his family from the assets. The amount is fixed by the *juge-commissaire*.

Filing of the balance-sheet.

When the balance-sheet is drawn up, after examination of the books and accounts, it is filed by the *syndics* in the Tribunal of Commerce.

The *syndics* can enforce all the rights belonging to the bankrupt and defend all actions brought against him. They may grant time for payment, but have no power to forgive debts entirely.

Moneys received by *syndics*.

The sums realised by sales made by the *syndics* must be immediately paid in by them to the *caisse des dépôts et consignations*, equivalent in England to payment into the Bank of England. Should they retain moneys in their possession beyond three days, they are chargeable with interest thereon at 5 per cent. per annum.

Moneys so paid in by the *syndics* or by third parties cannot be withdrawn without an order of the *juge-commissaire*.

Supervision of the public prosecutor.

The operations of the bankruptcy are carried on under the surveillance of the public prosecutor or *ministère public*, who prosecutes the bankrupt in case of fraud. The *syndics* are required, within 15 days from their definite appointment, to furnish the public prosecutor with a report, setting out the apparent position and principal causes of the bankruptcy.

VERIFICATION OF CLAIMS.

In order to apportion to each creditor his share in the bankrupt's estate, the several claims must be respectively examined and proved. The syndics, if they allow a claim, grant a certificate to the creditor, which is signed by the judge. In case of a disputed claim, the Court decides on its validity. The creditor is bound to lodge an attestation of the genuineness of his claim within eight days after the same has been allowed.

Proof of claims
and verification.

MEETING OF CREDITORS.

All creditors whose claims have been allowed are summoned by the *juge-commissaire*, and also by advertisement in the prescribed newspapers. Creditors can appear in person or by proxy. The object of the meeting is—

Meeting of
creditors.

1. Either to reinstate the debtor in his business, &c., by giving up a portion of their claims; or,
2. To distribute his estate by liquidation.

Agents who attend to represent creditors must have their powers* verified by the *juge-commissaire*, but one agent can represent any number of creditors. The debtor is summoned to the meeting, and is bound to appear in person, unless he can give satisfactory reasons for his absence.

Agents by
power of
attorney.

If the estate in question is that of a partnership or Company, it is represented by the partners, managers or directors, according to its constitution.

Company or
partnership.

The syndics present their report to this meeting, stating what proceedings and formalities have been gone through and observed. This report must be on stamped paper, and ought to be duly registered and signed by them and transmitted to the *juge-commissaire*, whose duty it is to draw up an abstract of the resolutions of the meeting.

Report of the
syndics.

The debtor makes his statement at this meeting, after which the creditors proceed to resolve as follows:—

Resolutions of
the creditors:

1. If a majority of creditors, representing three-fourths of the claims allowed, accept the offer of payment or composition made by the debtor, they arrange a *concordat* or agreement. An ordinary *concordat* re-instates the debtor in the management of his business. A special *concordat* hands over to the creditors either a part or the whole of the debtor's assets.
2. If the debtor's offer is rejected, the creditors are then

1. *Concordat*.

2. *Union*.

* See p. 113 for regular form of procuration or power, and translation.

said to have the full rights of *union*, after which they proceed to sell all the property of the debtor, real and personal, and to divide it according to their respective claims.

CLOSE OF PROCEEDINGS WHERE THERE ARE NO ASSETS.

Where there are no assets.

If the inventory of the debtor's property shows that he has practically no assets even to pay the expense of the bankruptcy, the Tribunal of Commerce has power to declare the proceedings suspended. The debtor can apply to have this sentence of the Court varied or reversed within one month from its date. The effect of the sentence is to make the debtor again liable at the suit of his creditors, whereas their rights of action were suspended by the judgment which had pronounced him unable to pay his debts in accordance with his declaration of inability. If he can give security for costs, the sentence will be removed, and the proceedings in bankruptcy continue.

Amounts subsequently recovered.

It is the better opinion that any sums subsequently recovered by creditors against the debtor belong to the body of creditors, and not to the individual plaintiff in each action.

PRIVILEGED CREDITORS.

Privileged creditors.

The various classes of privileged creditors are—

1. Creditors whose rights are secured by statute, constituting a lien on certain property belonging to the debtor.
2. Mortgagees and creditors holding similar security.
3. Creditors holding guarantees from the debtor's sureties or guarantors.
4. The debtor's partner, in respect of special rights belonging to him as partner.
5. Creditors by "running accounts," *e. g.*, holders of bills of exchange, &c.

To begin with the first division.

Priority of charges.

This includes certain creditors whose rights are secured in certain cases, even in preference to holders of such securities as a mortgage. The law grants priority of this special kind to—

1. Costs.
2. Funeral expenses.
3. Expenses of a last illness.
4. Salaries and wages.

5. Necessary, personal, and family expenses.
6. Costs of defending the debtor in any criminal or correctional Court.
7. Debts due to the State.

All secured creditors who are unaffected by the debtor's suspension of payments, may realise any security which they have in their possession in the same way as if the debtor had not failed. Secured creditors.

COSTS.

It has been decided that the costs of sealing and making an inventory of the debtor's property take precedence of all other debts. First costs.

Other costs, such as of the adjudication, declaring the debtor's suppression of payments, of the meeting of creditors, &c., are not to prejudice the rights of mortgagees or secured creditors, to whom they are practically of no benefit. Ordinary expenses.

Costs incurred by a creditor suing on his own account do not take precedence; but if any property is recovered for the benefit of the creditors generally, the costs of such recovery are a first charge upon it. Costs of actions by creditor.

As a general rule, as against those creditors who have profited by legal proceedings, the costs of those proceedings have priority; but if a creditor derives no such profit, *e.g.*, if he is a mortgagee and the proceedings were taken in the interests of the simple contract creditors only, the costs have no priority over his claim. General principle.

SALARIES AND WAGES.

Servants can recover their wages, if unpaid, for the current year and for one year preceding the date of adjudication. Salaries.

Clerks can recover six months' salary, from the same date, if they are paid by fixed salary. Wages.

Workmen (who are paid by the month or week) can recover one month's wages from the same date.

TRADESMEN SUPPLYING NECESSARIES.

A creditor to claim under this head (Art. 2,101), must be either a wholesale or retail merchant, or a boarding-house keeper; and the goods, strictly necessities, must have been supplied to the bankrupt or his family. Goods supplied by tradesmen.

The second division of privileged creditors, whose rights are secured on certain kinds of real or personal property, includes— Second class of preferred creditors.

1. The State Treasury.

2. Landlords.
3. Creditors secured by a pledge.
4. Persons who have incurred expenses for the preservation of the debtor's property.
5. Unpaid vendors of personal property or goods.
6. Innkeepers.
7. Carriers.
8. Creditors of public officials for debts incurred in the exercise of their duties.
9. Workmen employed by contractors for public works.
10. Special charges on ships and their cargo.

RIGHTS OF LANDLORD OR LESSOR.

Rights of landlord, if lease for a fixed term.

If the lease is by *acte authentique*, or *sous seing privé*, for a fixed term, the landlord has a right over the year's harvest and produce, the furniture of the house, and everything employed to keep it up and (if a farm) to work it, in order to satisfy his claim to all rent due at the date of adjudication and to all which would fall due during the remainder of the term.

This right is absolute, and cannot be set aside by depositing the amount of the rents in the *caisse des consignations*, for the landlord to receive each year's rent as it falls due, but the creditors can claim the remainder of the term and work the land for their profit, paying of course all that is due to the landlord.

If for no specified time.

If the lease is by private deed, without a specified term, the landlord can only recover all rents due at the date of adjudication, and the rent of the current year and of the year next following.

As regards business premises.

Considerable modifications of these rights of the landlord were introduced by the law of February 12th, 1872, as regards leases of land or house property appropriated to the commercial or business operations of the bankrupt. In those cases, if the lease is cancelled, the landlord can only exercise his privilege over such property for two years' rent due before the adjudication, for the rent of the current year, and for such damages as may be awarded by the Courts. If the lease is not cancelled, the landlord is compelled to accept reasonable security if offered, and cannot demand immediate payment of rents accruing due, or which will accrue in the remainder of the term. But since this law only applies to property leased for *commercial or business operations*, the provisions above

set out still apply to lessees of houses or lands for their own occupation.

In assessing the two years' outstanding rent allowed by this law, the time is reckoned from the date of the lease, *e.g.*, if a lease is made in April, 1876, and the adjudication takes place in July, 1880, the landlord's claim is for the two years' rent (if unpaid) from April, 1878, to April, 1880; and from the latter date the rent of the current year is calculated.

How rent is reckoned.

In the case of outstanding or future rents, not covered by these privileges, the landlord can prove with the other creditors against the bankrupt's estate.

Right to prove against the estate.

The right of the landlord to seize furniture extends only to moveables which actually furnish the leased premises; jewels, *e.g.*, are not liable to his claim as landlord.

Furniture.

Goods on leased premises are subject to this right of the landlord, and also the price of goods sold if the money happens to be on the premises at the time of bankruptcy.

Goods on leased premises.

As a general rule, it makes no difference whether the furniture on the leased premises is or is not the property of the lessee. But this rule is sometimes relaxed on equitable grounds, *e.g.*, if some piece of property is lent or pledged with the bankrupt, or if stolen property happened to be on the premises, in which case the owner can claim it. Similarly books sent to a binder, corn entrusted to a miller to grind, in fact, goods bailed or deposited with the bankrupt, are not, as a rule, liable to be seized by the landlord.

Furniture on leased premises.

Exceptions.

Again, the goods and furniture of a sub-lessee are not liable to be seized by the landlord of his lessor: the sub-tenant is only bound to pay the rent of his sub-tenancy. And if the lessee has pledged or pawned any of his furniture, and it is no longer on the premises, the landlord has no rights over such pledge or pawn.

Goods of sub-lessee.

If the landlord's claim exists, and no prior claims are established, the *juge-commissaire* will make an order authorising the immediate payment to him of his claim out of the proceeds of the sale of furniture, &c.

If the syndics have continued to hold the leased premises after the expiration of the lease, the landlord has a claim to indemnity against the entire assets of the bankruptcy, and not merely against the value of the furniture on the premises.

When syndics hold after lease has expired.

DEBTS SECURED BY PLEDGE.

Pledge or pawn. The creditor who receives an article in pledge (*gage*) can realise his debt out of the thing pledged. In civil transactions the contract, to be valid against third persons, must be in writing, but this is not necessary in business matters. However, creditors thus secured should prove with the other creditors, since their rights may be disputed on various grounds; and even if they exercise their legal right to sell after adjudication, it is safer to have their claim allowed and verified. If the price obtained exceeds the amount of their debt (with interest and expenses), the surplus must be paid to the syndics.

Special claims. Usually, if any person has incurred expense *bonâ fide* for the preservation of the property of the bankrupt, he has a special claim on the assets. As an instance may be given the case of a person supplying fresh boxes or bales to save goods from damage, or the case of a warehouseman who by warehousing goods saves them from injury.

RIGHTS OF UNPAID VENDORS.

Unpaid vendors. The Article (2,102) of the Code which allowed an unpaid vendor of moveables to reclaim them, in case of bankruptcy, was repealed by the law of 1838. But if the article sold has not been delivered into the actual or constructive possession of the vendee, the vendor can retain it.

INNKEEPERS.

Innkeeper's lien. An innkeeper has a lien in bankruptcy on all goods and effects which are brought to his house by a traveller staying there, even if they are not the property of the traveller, provided only that they are neither lost nor stolen goods. The lien does not extend to claims in respect of previous visits by the same traveller, and only extends to goods actually in the inn or on its premises.

CARRIERS.

Carriers. The lien of carriers is based on the implied contract between them and the consignor of goods that the charges of carriage shall be paid.

PUBLIC OFFICIALS.

Security taken from officials. The security given by an official for guarantee of good conduct is primarily liable for any debts incurred by him by misconduct, maladministration, &c.

CONTRACTORS FOR PUBLIC WORKS.

Moneys due from the State to public contractors are subject to a first charge in favour of workmen, sub-contractors, persons who have supplied materials, &c., and this charge is extended to security deposited with the State by the public contractor.

Charge on moneys due to public contractors.

MORTGAGEES AND CREDITORS SECURED ON IMMOVEABLE PROPERTY.

The failure of a debtor does not affect any *bonâ fide* holder of a mortgage on his immoveable property. If the mortgage has been duly executed, and if there is no fraudulent preference of one creditor above another, the mortgagee can exact payment of his debt without reference to the proceedings in bankruptcy. He is not even required to go through the formalities of verifying and attesting his claim. If the mortgaged property is insufficient to satisfy the claim, the mortgage creditor can prove with the others, but in that case all the formalities (as in the case of creditors in possession of a pledge) should be observed.

Rights of mortgagees not affected by bankruptcy.

RIGHTS AGAINST CO-SURETIES AND GUARANTORS.

A creditor who holds security in the shape of guarantees, or bonds signed by sureties to his debtor, can proceed against any one of the co-sureties and recover the whole sum from any one of them, provided that if his claim is once paid his rights lapse as against the remainder. If some of the co-sureties to a joint and several bond fail, the creditor may claim the whole debt against the estates of each; that is, by proving in bankruptcy against A., and receiving a dividend, he does not lose his right to prove against the estates of B. and C. for his whole debt; but this is limited by a proviso that the sum total which he receives from all must not exceed the whole of his debt. But if the creditor has proved against the estate of one co-surety who has failed, and then proceeds against a solvent co-surety, the latter can compel him to deduct the dividend he has received under the bankruptcy.

Guarantees.

Sureties.

RIGHTS OF CO-SURETIES ON BANKRUPTCY OF PRINCIPAL.

A co-surety who has paid his principal's debt may prove against his estate for the balance, after deducting the share which he was personally liable to pay. If the creditor has not been paid, and proves for the whole of his claim, no surety can prove with him.

Rights of sureties against principal.

CREDITORS HOLDING BILLS AND DRAFTS BY RUNNING ACCOUNTS.

Running
accounts.

The failure of one of two merchants between whom a running account existed stops the business transactions between them. Various questions arise when these transactions are carried on by bills of exchange.

Effect of
bankruptcy
upon bills
accepted by
bankrupt.

If the bankrupt is debtor in respect of bills not yet due, sent to him by his correspondent, the debt is said to be postponed until the bills fall due; the payee therefore cannot receive any dividend in bankruptcy without giving security to meet the event of bills not being paid, otherwise the amount of his claim which will become due will be paid into the proper office (*caisse des consignations*).

If the bankrupt has negotiated the bills sent to him, the holders may put in their claims in the bankruptcy proceedings; in that case the payee has no need nor right to prove, in fact the holder's claim is his best guarantee.

If there are mutual transactions by bills not yet due, on which bills a balance appears to be in favour of one of two merchants, this balance, existing only in the nominal value of the bills, cannot be demanded from the person apparently owing it to the bankrupt, because it is only a conditional debt, and by the failure of the bankrupt will never be paid in full.

OF THE DIVISION AMONG THE CREDITORS AND THE REALISATION OF PERSONAL PROPERTY.

Proceedings
after union.

When the bankruptcy results in *union*,* the *syndics* proceed to realise the bankrupt's effects and distribute the price proportionately among the creditors. After paying all privileged creditors, the expenses of the proceedings allowed by the *juge-commissaire*, and deducting the grants made to the debtor's family, the creditors receive the composition payable on their claims verified and attested.

Foreign
creditors.

The usual practice is to send notice to each of the creditors. Creditors domiciled in foreign countries are allowed by the law a special time, according to the circumstances, within which they must send in their claims for verification. Before any distribution takes place among creditors domiciled in France, a proportionate sum must be deposited in the proper office (*caisse des consignations*) to meet the claims of foreign creditors which have been set out in the debtor's schedule. If the

* For definition see p. 100.

schedule appears incomplete to the *juge-commissaire*, he can order the amount so reserved to be increased.

If foreign creditors fail to send in and have their claims verified within the special limits allowed to them, they are treated as in default, and the reserve fund set aside for them is distributed among creditors who have duly established their claims.

Limit for
sending in
claims.

POWERS OF THE TRIBUNAL OF COMMERCE.

The Tribunal of Commerce has power in matters of bankruptcy:

Jurisdiction of
the Tribunal of
Commerce.

1. To receive the debtor's statement of his suspension of payment and the schedule of his assets and liabilities.
2. To declare his bankruptcy, and to fix the date for the commencement of proceedings.
3. To name the *juge-commissaire* who is to superintend the proceedings; to name the *syndics* and to revoke their appointment or to add new *syndics*, and to decide all complaints against them.
4. To order seals to be affixed to the debtor's property; to arrest the debtor and to grant or refuse him a "safe conduct."
5. To fix the sum to be paid for the support of the family of the debtor.
6. To receive the schedule drawn by the *syndics* and their inventory of the debtor's property.
7. To confirm certain arrangements in respect of personal property made by the *syndics* and authorised by the *juge-commissaire*; to examine the verification and attestation of claims; to decide on suspending the proceedings in bankruptcy in the case of disputed claims; to confirm, annul, and decide questions arising from the *concordat*; to decide disputes about the accounts furnished by the *syndics*, and to close the proceedings where the assets are insufficient for their costs; to decide all claims of parties not creditors to property in the hands of the bankrupt; and to annul any agreements giving a fraudulent preference to any creditor.

The Civil Courts have power to deal with—

1. Certain arrangements in respect of immoveable property made by the *syndics*.

Power of Civil
Courts.

2. Claims disputed on grounds of civil law.
3. All opposition to the *concordat* when the decision entails questions outside the jurisdiction of the Tribunal of Commerce.
4. The sale of immoveable property belonging to the debtor and the distribution of the proceeds.
5. Claims made by the debtor's wife in virtue of her relation to him.

The *Tribunaux Correctionnels* decide on—

1. *Banqueroutes simples*.
2. The appropriation, embezzlement, or concealment of the debtor's property by his partner or members of his family.
3. Actions for fraudulent mismanagement against the *syndics* in virtue of their duties.
4. Actions against creditors who have stipulated for special advantage in consideration of their voting in favour of the debtor.

APPEALS IN BANKRUPTCY.

Rules on appeal.

Special rules on the subject of appeals are in force under the law of 1838, according to the subjects dealt with by the judgment appealed against:—

- (1). Judgment declaring the bankruptcy and appointing its commencement.

Limit of time.

This being equivalent to a judgment by default, it can be called in question by any interested party, either the bankrupt or his creditors. The bankrupt has eight days within which he must lodge an appeal, other parties are granted one month.

Binding on foreign creditors.

These limits are absolute and are never extended, therefore *all foreign creditors* are bound by them.

- (2). Judgments which are merely ministerial, dealing with matters of practice.

Where no appeal is allowed.

No right of appeal of any kind is allowed against these judgments. They include—

1. Nomination or discharge of the *juge-commissaire* or *syndics*.
2. The demand of "safe-conduct" (freedom from arrest).
3. Of support for the family of the bankrupt.
4. Sale of goods of the bankrupt.
5. Suspension of the *concordat*.
6. Provisional admission of creditors whose claims are disputed.

- (3.) All other judgments, except those above mentioned, are liable to be set aside in the same manner and by the same means as an ordinary judgment of the Tribunal of Commerce.

In bankruptcy the time for appeal is limited to 15 days, but with this proviso, that *for parties domiciled out of the jurisdiction of the tribunal* a further time of one day for every 31 miles of distance is allowed. Proportional limits.

Special penal provisions have been enacted to deal with offences and crimes committed by the bankrupt, his creditors, or the *syndics*.

“Concordat,” or Composition.

The *concordat* corresponds to the composition under proceedings in an English Court of Bankruptcy. Concordat.

It is an arrangement by which the creditors of a bankrupt trader either grant to their debtor an extended time within which to meet his liabilities, or cede to him a certain proportion of their claims.

1. The *concordat* can take place:—

In ordinary cases, when the failure of the debtor is not the result of serious mismanagement or fraud on his part; it is thus to the interest of the creditors to come to an arrangement with him and to avoid the delay and expense of bankruptcy proceedings. When advisable.

To protect the rights of individual creditors, it is a condition precedent to the *concordat* that all the preliminary steps in the bankruptcy must have been duly gone through, and the opening of the bankruptcy formally fixed. Conditions precedent.

No person convicted of fraudulent bankruptcy can at any time in his life, or in any subsequent bankruptcy, obtain the benefit of a *concordat*. When concordat not allowed.

By the law of 1838 (Art. 531 of the Code of Commerce), if a business partnership becomes bankrupt, any individual member of the firm can obtain a *concordat* in his own favour. In case of partnership.

2. Mode of arranging the *concordat*:—

A meeting of the creditors is called within three days after the limit fixed for the verification and attestation of claims. How arranged.

The *concordat* must be passed by a majority in number of the creditors, representing three-fourths of the Requisite majority.

amount of the liabilities. It must be signed at the meeting, otherwise it is void.

By Art. 515 it is enacted, that if the proper formalities are not complied with, the Court will refuse to confirm the *concordat*.

Appeal against
concordat.

Opposition to or appeal against the *concordat* must be entered within eight days after the meeting at which it was signed. After this date the Court proceeds to confirm it. When confirmed, it can only be annulled on the ground of fraud on the part of the bankrupt.

Fraudulent
preference.

Any private arrangement, either with the bankrupt himself or with third parties, made by a creditor in consideration of his voting for the *concordat*, renders the creditor making it liable to imprisonment not exceeding one year, and to a fine not exceeding 2,000 fs. (£80).

3. *Concordat amiable* :—

Concordat
amiable.

When certain creditors agree to compromise with a debtor, the arrangement is called *concordat amiable*. This is a private arrangement, not subject to the formalities of the *concordat*, and consequently only binding on those creditors who enter into it.

Of the UNION in French Bankruptcies.

Explanation of
union.

The *union* is said to exist when the composition or *concordat* offered by the bankrupt is not accepted by his creditors. It is a legal consequence of the refusal to accept the composition, and results from the position of the bankruptcy immediately on such refusal, by mere operation of law.

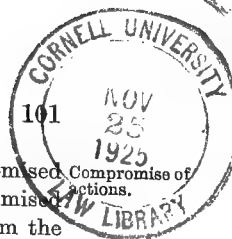
Realisation of
estate.

A meeting of the creditors must be called immediately, for the creditors under the *union* have full power to realise the bankrupt's estate as they please, and to divide it among themselves.

Resolutions.

All creditors are summoned to this meeting, whether secured or not. The points to be settled are: (1) the appointment of new or continuation of the syndics already appointed; (2) the grant of an allowance to the bankrupt; (3) the carrying on of the business by the syndics: but as the sole object of the *union* is to realise the estate, it is necessary for a majority of three-fourths, both in number and amount, to pass a resolution to this effect.

When these points have been settled, the meeting proceeds to discuss the realisation of the debtor's estate.



Suits in relation to the estate are usually compromised under these circumstances; doubtful debts are compromised or sold; the real property is sold within eight days from the date of the *union*, with the sanction of the *juge-commissaire*, under the supervision of the Court, with an upset price fixed. If a creditor is dissatisfied with the sale, he can have it re-opened by offering one-tenth more than the price obtained.

Personal property belonging to the estate is sold by the syndics under the direction of the *juge-commissaire*.

Before distributing the assets, the following deductions are made:—

1. The expenses of the bankruptcy;
2. The advances or allowance made to the bankrupt for himself and his family;
3. The sums due to mortgaged and privileged creditors.

The dividends on the distribution are then effected as speedily as possible.

Contingent creditors, *i. e.*, those whose claims are doubtful, receive dividends with the rest, but are bound to give security for the restitution of their dividends if their claims are afterwards set aside.

Mortgagees or creditors secured on real property are paid directly out of the sale of the realty. If the distribution of the personalty precede, they receive an equivalent dividend, but must give security for its restitution, in case their debt is fully paid up by the subsequent sale of the realty.

Creditors holding a pledge receive no dividend unless they have realised the value of their pledge and found it insufficient to pay their claim in full; they then prove for the balance.

When the distribution is ended the final proceedings follow. The creditors are convened by the *juge-commissaire*. The syndic then renders his accounts, and the bankrupt should also be present. The chief object of the meeting is to grant the debtor a provisional discharge, by declaring his failure excusable. However, the *excusabilité*, if declared, does not now affect the position of the bankrupt in any legal way. The creditors, though the *union* is closed at this meeting, immediately recover their rights to sue on their individual debts; and if the debtor subsequently acquire property, they may seize it. They cannot, however, proceed against him again in bankruptcy on their original claims.

BANQUEROUTE.

Definition: Condition of a bankrupt who has been guilty of wrong dealing or fraud (*fautes ou dol*).

Kinds of
banqueroute.

There are two kinds of *banqueroute* considered by the law—simple and fraudulent.

Banqueroute simple is said to exist when the bankrupt has committed serious mistakes, or has been guilty of imprudence, without intending to injure his creditors.

Fraudulent bankruptcy, as the term implies, is when the bankrupt has acted fraudulently, with a view to cheat his creditors.

Only traders
liable.

Banqueroute presupposes *faillite*. It follows, therefore, that only those who can be made bankrupts, *i.e.*, traders, can be prosecuted for *banqueroute*. However, proceedings in bankruptcy which are criminal may be taken before the adjudication of bankruptcy has been pronounced.

A bankrupt acquitted on a charge of *banqueroute simple* may be prosecuted as a *banqueroutier frauduleux* for other acts.

Bankrupt
cannot be twice
prosecuted in
the same
bankruptcy.

But a bankrupt who has been acquitted at the *Cour d'Assises* on a charge of *banqueroute simple*, in reference to his failure, cannot be again criminally prosecuted for *banqueroute simple* on any charge arising out of the same failure.

The various acts which constitute *banqueroute simple* are considered by the law as one criminal act, and the maxim of law, that no person once legally acquitted can be tried again on the same charge, applies in this case.

WHO MAY PROSECUTE—MODE OF PROSECUTION.

Who may
prosecute.

Banqueroute being treated as a crime or an offence (*crime ou délit*), the accused may be prosecuted by the syndics or by a creditor, or by the public prosecutor acting either *ex officio*, or on the information of any third party. As a rule, the public prosecutor conducts the case.

The acceptance of a composition does not interfere with a prosecution by any of the persons entitled by law to prosecute.

French trader
in foreign
countries.

A French trader residing in a foreign country can be prosecuted in France for fraudulent bankruptcy, if the acts charged have been committed in France to the injury of French subjects.

The same applies to a foreign trader.

Foreigners.

Prosecutions in the case of *banqueroute simple* must be brought within three years, and in the case of *banqueroute frauduleuse*, within 10 years; in both cases, from the date on which the act charged was committed, if that act is subsequent to the commencement of the bankruptcy; and from the date of suspension of payments, if the act was committed prior to the bankruptcy.

Limitation of time for prosecution.

The offence of *banqueroute simple* is dealt with by the Court of *Police Correctionnelle*; the *frauduleuse* by the *Cour d'Assises*.

Costs in *banqueroute simple*.

In the former case, if the accused is condemned, the costs fall upon the Treasury; if acquitted, upon the person or authority prosecuting.

In *banqueroute frauduleuse*.

In the case of fraudulent bankruptcy, the costs are always borne by the Treasury, unless an individual creditor or creditors have acted as *parties civiles*, in which case the costs in the event of an acquittal are borne by him.

BANQUEROUTE SIMPLE.

There are two classes of acts which constitute this offence. The first necessarily entails conviction, if proved; the second may result in conviction:

When conviction is inevitable.

To the former class belong:—

1. If the bankrupt's personal or household expenses are considered excessive;
2. If he has lost large sums of money in simple speculation;
3. If, to avoid bankruptcy, he has bought goods with the intention of reselling them below the market price, or raised money by borrowing, accepting bills, or other ruinous method;
4. If, after suspending payment, he has paid one creditor in preference to the rest.

These offences necessarily entail conviction; the judge, however, has discretion to inflict a light sentence, according to the circumstances.

Discretion of judge as to penalties.

It should be added that the payment to one creditor must be a payment which gives him an unfair preference to the prejudice of the rest. A payment to a privileged creditor does not fall within this category.

The following acts may entail conviction:—

1. If the bankrupt has entered into engagements on

When conviction may follow

behalf of another which are considered too serious in view of his position at the time ;

2. If he is declared bankrupt a second time without having satisfied the conditions of a previous composition ;
3. If, being married under the *régime dotal* or *séparation de biens*, he has not published his marriage settlement.
4. If, within three days from his suspension of payments, he does not make the statutory declaration at the office as required by Arts. 438 & 439 of the Code of Commerce.
5. If he has failed to appear before the syndics, or in Court, without sufficient reason ;
6. If he has not kept proper books or taken stock regularly, or if his books are so carelessly kept as not to state his real position.

Penalties.

Punishment.—Imprisonment for not less than one month and not more than two years.

Stockbrokers.

Stockbrokers and brokers who become bankrupt are, *ipso facto*, treated as *banqueroutiers*, and are punished by a term of hard labour. Further, the sentence of the Court is advertised in the newspapers of the district which are appointed for this purpose by the Tribunal of Commerce.

BANQUEROUTE FRAUDULEUSE.

Fraud.

Under this head are included all cases of fraud. No enumeration is made of them, but the Court and jury decide upon the facts of each case laid before them. As instances may be mentioned the concealment of business books, the embezzlement or concealment of a portion of the assets, or fraudulent entries made in favour of the bankrupt, *e. g.*, if he enters himself as owing sums which are not due from him. A purchase of real property in the name of third persons, either before or after the adjudication in bankruptcy, with intent in the former case to defraud, would also entail a prosecution under this head.

Penalties.

Punishment.—A term of hard labour. This may in certain cases be reduced by the Court to simple imprisonment or confinement (*séclusion*).

Stockbrokers and brokers convicted of fraudulent bankruptcy are punishable by hard labour for life.

The attempt to commit fraudulent bankruptcy is punishable in the same manner. Attempt to commit *banqueroute frauduleuse*.

The *concordat* (composition), if it has been agreed to, is annulled by a conviction.

Any person who advises another to commit acts of *banqueroute simple* is liable to be convicted as an accomplice. This, however, from the nature of the offence, rarely occurs. Accessory.

In fraudulent bankruptcy the complicity of others is more frequent, since third parties may often have a personal interest in the commission of the crime.

The accomplice or accessory is liable to the same penalties as his principal. The Court has power to vary these between the *maximum* and *minimum* that may be inflicted.

Art. 593 of the Code of Commerce enacts that the following acts by accomplices shall entail the penalties of fraudulent bankruptcy :— Art. 593.

1. The withdrawal or concealment of a bankrupt's property.

A clerk who only carries out his principal's orders cannot be convicted as an accomplice on this ground.

2. The presentation of fraudulent claims against the bankrupt.

3. Committing acts of fraudulent bankruptcy while carrying on business under the name of another person, or under an imaginary name.

This last paragraph was enacted to prevent transactions from being carried on under cover of men of straw, who, in case of failure, were either left to suffer the penalties, while the real criminal escaped, or were provided by him with means of leaving the country. Reason for the enactment.

In spite of an acquittal at a criminal trial of a person accused as accomplice, he may be ordered by the Court, if they think fit, to restore the property belonging to the bankruptcy which he has appropriated or otherwise dealt with.

The distribution of the assets of the bankrupt is not affected by the prosecution, but continues under the ordinary rules. A guardian should, however, be appointed to act for the bankrupt if condemned to imprisonment and a term of hard labour. Bankrupt's guardian.

Creditors retain their rights to civil actions for damages distinct from the criminal proceedings.

OF THE REHABILITATION OF BANKRUPTS.

Disabilities of *banqueroutier*.

The adjudication in bankruptcy entails certain disabilities upon the bankrupt. It suspends the exercise of his rights as a citizen; he cannot become a stockholder or broker (*courtier*); and he may not appear on the Bourse, though permitted to carry on trade.

Réhabilitation.

All these disabilities may cease by *réhabilitation*, which is a restoration of the bankrupt to all the rights which he enjoyed before the bankruptcy.

Payment of debts in full.

To obtain it, the bankrupt must pay in full the principal and interest of and costs on all debts due by him. If a member of a *Société*, he cannot be so restored until all the debts of the *Société* have been paid. No special composition granted to himself will suffice.

Procedure.

The application is made by the bankrupt to the Court of Appeal of the district in which he is domiciled, accompanied by the receipts of his creditors and other documents necessary to support it.

This application is forwarded to the *Procureur-Général*, and by him certified copies are sent to the *Procureur de la République* and the President of the Tribunal of Commerce in whose district the applicant is domiciled, or, if necessary, to the President of the Tribunal of Commerce within whose jurisdiction the bankruptcy took place.

Each of these officials satisfies himself as to the truth of the statements, and for this purpose each has to have a copy of the application posted up in his Court, on the Bourse, and on the *maison commune*. The copy remains so posted up for two months, and is also advertised in the newspapers.

Opposition.

During this time, any creditor who has not been paid in full can apply to set aside the application by depositing a statement to that effect at the *greffe*, or office, with documents to support his opposition.

After the two months has expired, the notices to set aside the application and the information are forwarded to the *Procureur-Général*, with the comments of the officials (*Procureur de la République* and President of the Tribunal of Commerce). The *Procureur-Général* then obtains a decree from the Court, granting or dismissing the application.

If dismissed, the application cannot be renewed until after the interval of a year.

If granted, the decree is transmitted to the *Procureur de*

la République and to the President of the Tribunal of Commerce; the decree is publicly read and entered on the registers.

Fraudulent bankrupts, persons convicted of larceny, false pretences, abuse of confidence, and *stellionataires*, are incapable of rehabilitation.

Banqueroutiers simples can be rehabilitated on the same terms as ordinary bankrupts, after undergoing their sentence.

A bankrupt can be rehabilitated after his death.

FORMS.

Form of Declaration of Suspension of Payments, accompanied by Deposit of Balance-sheet.

The 1st day of March, at the office (*greffe*) of the Tribunal of Commerce of the Seine, at Two o'clock in the afternoon, M. *Jean Duval*, cloth merchant, carrying on business at 10, Rue de Rivoli, Paris, appeared, and in pursuance of the provisions of Art. 438 and 439 of the Code of Commerce, stated and declared, that having sustained serious losses in trade, he has up to the present time made every effort to honour his engagements, but he has arrived at a stage when he has abandoned the hope of being able to continue his operations, and has therefore determined to suspend his payments.

Form of
declaration of
suspension of
payments.

That he has drawn up a statement of his assets and liabilities, which he now deposits with us, written upon 10 sheets of stamped paper, each page being signed by him at the commencement and at the end.

Having made such declaration and deposit, he has demanded a certificate thereof, which we have handed to him and he has signed the same with us. (Here follow the signatures of the debtor and of the Registrar).*

Form of Adjudication in Bankruptcy, on the Petition of the Bankrupt.

The Tribunal of Commerce of the *Arrondissement* of
has delivered the following judgment:—

Whereas Mr. *A. B.*, silk merchant, residing at
has made a declaration of suspension of payments, and has deposited a balance-sheet of his liabilities at the office of the Court,

Form of
adjudication.

* Should the debtor not file his balance-sheet, he sets out the causes which prevent his so doing.

After due consultation, in accordance with the law, the Court declares Mr. *A. B.* in a condition of open bankruptcy.

And whereas the suspension of payments began on the 10th instant, the Court fixes that date (June 10th, 1881), as the date for the commencement of the bankruptcy; and if this is not observed, then all property, &c., of the bankrupt shall be sealed in accordance with Arts. 455 and 458 of the Code of Commerce, and for this purpose notice of this judgment shall be immediately given by the *greffier* to *M.* the *juge-de-paix*;

M., member of this Court, is appointed *juge-commissaire* of the said bankruptcy, and *M.* provisional syndic.

The present judgment shall be published in an extract thereof in the newspapers, in conformity with Art. 442 of the Code of Commerce, and in manner directed by Art. 42 of the said code.

This judgment shall be provisionally executed according to its form and tenor.

Done at the 20th June, 1881, in open Court, before *MM.*

Petition of a Creditor for an Adjudication in Bankruptcy.

Form of
creditor's
petition.

To Messieurs the President and Judges of the Tribunal of Commerce at . Mr. *C. D.*, merchant, residing at

, has the honour to submit to you that he is creditor of Mr. *A. B.*, trader, domiciled at for the sum of 1,000 fs. on a bill of exchange accepted in his favour by the said Mr. *A. B.*, on the 10th January, 1881; and protested, in default of payment when due, by a writ of *huissier*, dated and registered. And whereas the said Mr.

A. B. has already suffered other bills to be protested, and several judgments have lately been recorded against him; that his position of suspension of payments is permanent, and dates back to at least . The petitioner prays that the

Court may think fit to declare the said Mr. *A. B.* bankrupt, fix provisionally the date of the commencement of the bankruptcy at the time above indicated, appoint a *juge-commissaire* and one or more syndics; order the seals to be affixed on the shops, desks, books, papers, goods and chattels of the bankrupt, and all other acts demanded by the law, and you will do justice.

(Signed)

At the

Adjudication of Bankruptcy on the Petition of a Creditor.

The Tribunal of Commerce of the *arrondissement* of
has delivered the following judgment:—

Form of
adjudication.

Between Mr. *C. D.*, merchant, domiciled at _____,
petitioner for an adjudication in bankruptcy, appearing by M.
_____ barrister (or *agréé*), duly appointed to act for him,
according to the power by private deed given to him the
and registered at _____ the _____ of the same month, &c.,
of the one part, and Mr. *A. B.*, trader, domiciled at _____,
debtor, of the other part. Whereas a petition has been pre-
sented to-day to the Court, by Mr. *C. D.*, wherein he states
that he is creditor (insert the form in the petition).

After hearing Mr. _____ of counsel for Mr. *C. D.*, who has
prayed that the Court may adjudicate according to the terms
of the said petition; considering that the bankruptcy of Mr.
A. B. is sufficiently proved by the numerous protests of bills
and judgments recorded against him; that it is our duty,
while adjudicating him bankrupt, to fix the date of it at
_____, when his suspension of payments began, and to
order the execution of other acts required by the law. There-
fore the Court, after deliberation held, declares Mr. *A. B.*
bankrupt (for the rest add the first form), and orders Mr. *A. B.*
to pay the costs, which shall be a first charge upon the assets
of the bankruptcy.

So judged, &c.

Procès-Verbal of the Verification of Claims.

The 20th June, 1881, at _____ o'clock, before us, judge of
the Tribunal of Commerce of _____, *juge-commissaire*
in the bankruptcy of *A. B.*, in the Council Chamber of the Court,
appeared Messrs. _____ syndics in the said bankruptcy,
who informed us that they have concluded the examination of
the books, registers and papers of the bankrupt; that they
have drawn up a report of the apparent position of the bank-
ruptcy, and given notice of it to the creditors, both by letters
from the *greffier* and by insertion of the same in the Gazette,
entitled _____, stating that proceedings would be to-day
taken before us for the verification of the various claims and
debts. Whereupon, in presence of us, *juge-commissaire*, the
proceedings, as follows, for the said verification, have been
taken by the syndics:—

Form of
admission of
claims.

1. Mr. *C. D.*, holder of a judgment against the bankrupt for

Form of admission of claims. a sum of 1,800 fs., on three bills, which the bankrupt had failed to meet when due, declaring upon his soul and conscience that he has never received any payment on this claim, which is still due to him in its entirety, as well as interest and costs. The syndics state that they have no comment to offer; therefore, considering the said judgments and bills and also the affirmation made, we, *juge-commissaire*, treat this claim as verified; and therefore declare that Mr. C. D., now before us, shall be entered among the general body of creditors of the bankrupt for the said sum of 1,800 fs., and for the interests and costs due to him as found.

2. Mr. E. F., holder of a bond signed by the bankrupt, before Mr. _____ and his partner, notaries at _____, duly registered, wherein the bankrupt admits himself indebted in the amount of 4,000 fs., for money lent, which sum the said Mr. E. F. has affirmed to be due to him in its entirety. The syndics offering no comment on this, we have tendered to the said E. F. a deed of affirmation, and considering the statement made by him, we declare his claim verified and affirmed, and that he shall be entered in the list of creditors of the bankrupt for the said sum of 4,000 fs.

3. Mr. G. H., holder of three bills for 400 fs. each, accepted by the bankrupt on the _____ declaring that the amount of 1,200 fs. is due to him in its entirety. The syndics of the bankruptcy state that this claim is groundless; that the bills were not registered until after the bankruptcy; that they have no clear date to show that they are not bills signed by the bankrupt for the purpose of increasing the number of his creditors, and afterwards of obtaining back the amounts thus paid to the prejudice of the creditors. We, *juge-commissaire*, considering that Mr. G. H. does not sufficiently establish his claim, that the bills which he holds were dated subsequently to the bankruptcy, declare that this claim is not properly verified, and that his name is not to be entered on the list of creditors, with leave to him to appeal to the Court as he may be advised.

4. &c., &c., &c.

(Signatures.)

Practice.

N.B.—The affirmation, which should be made within a week of the verification, may also, as above, be made at the same time, and then it is so stated in the *procès verbal* of the verification. At Paris, instead of making the verification in the presence of the creditors assembled, which would cause

waste of time, the practice is formally to call those creditors *Practice.* whose claims are allowed by the syndics and the *juge-commissaire*, and to take their affirmation directly. The *procès-verbal* states that *A. B. &c.* (creditor), has been admitted on the list of creditors for the sum of _____, and that he has affirmed the genuineness of his claim.

Form of a Concordat.

10th January, 1881.

The undersigned, creditors in the bankruptcy of *A. B.*, all Form of concordat. named, qualified and *domiciled* in the *procès-verbal* of the verification of claims, comprising a numerical majority, and representing three-fourths in amount of verified debts, assembled at the regular place of meeting of creditors, in the Court presided over by _____ *juge-commissaire* of the aforesaid bankruptcy, assisted by the *greffier*:

After hearing the report made to them by the syndics upon the position of the bankruptcy, the measures that have been taken, the formalities observed, and the proposals of the bankrupt with regard to the grant of a *concordat*:

Considering that the report drawn up by the syndics, and the explanations furnished by the bankrupt, show that he is not guilty of misconduct or of fraud, and that, on the other hand, his failure may be considered unfortunate and in good faith, and that the proposals made are preferable to the formation of a contract of *union* which would strip him of his property; have passed, resolved, and signed at this meeting the following arrangement:—

Art. 1. The creditors relinquish to *A. B.*, who requests and accepts it, absolutely, simply, and definitely, all interests and costs, and further 75 per cent. on the principal of their claims verified and attested.

Art. 2. The 25 per cent. not relinquished shall be paid as follows: 15 per cent. within 15 days after the confirmation of this arrangement, and 10 per cent. within three months after the date aforesaid.

Art. 3. *The form of the guarantee, if any.*

Art. 4. All privileged debts—*i. e.*, _____, and expenses incurred in the proceedings in bankruptcy shall be paid in full.

Art. 5. Mr. *E. F.* is named manager of the fund, to receive the amount stipulated by Art. 2 to be paid by *A. B.* (or his surety), and to distribute it among the creditors.

Art. 6. On condition of payment of the dividend stipulated by Art. 2, the creditors declare *A. B.* completely free and discharged with respect to themselves; and therefore they hereby grant to him the withdrawal of all opposition whatsoever entered by them prior to his bankruptcy; further they bind themselves to withdraw from circulation, or to pay when due all bills signed or indorsed by the bankrupt, in such manner as to release him from all claims upon them by third parties, reserving at the same time all their rights against his co-sureties.

Art. 7. In default of faithful execution of the present arrangement by *A. B.*, action may be brought to cancel it, according to Art. 520 of the Code of Commerce.

Art. 8. These presents shall be laid before the Court for confirmation within the statutory time.

Made at Bordeaux, the 10th day of January, 1881.

(Signed)

Form of Judgment confirming the Concordat.

Form of judgment confirming the concordat.

On examination of the petition presented, together with the report of M. the *juge-commissaire*—

The Court, considering the reasons set out, and that all formalities prescribed by the law have been duly observed, confirms the *concordat* now before them to be carried out according to its form and purport, and binding on all creditors, according to Art. 516 of the Code of Commerce.

Made and decreed at Bordeaux, the day of January, 1881.

PRACTICAL INSTRUCTIONS FOR PROOF OF CLAIMS.

Foreign creditors in a French bankruptcy.

Creditors in England seeking to prove their claims in French bankruptcies must, in the first instance, appoint an agent to fulfil the necessary formalities in the Tribunal of Commerce in which the bankruptcy was declared. Such agent can only act pursuant to the properly constituted *pouvoir* or power, and the following is the regulated form of procuration in universal use at the present time.

POUVOIR,

Pour Représenter à une Faillite.

Je, soussigné John Smith, négociant demeurant à Londres, 65, Cornhill, donne pouvoir à M (name of agent in France), demeurant à Paris, rue (name of street), No. de représenter à la Faillite de Pierre Duval, Fabricant de Vernis.

Form of procuration to prove in a French bankruptcy.

Enregistré à
Reçu trois francs 60 cent.

En conséquence requérir toutes appositions, reconnaissances et levées de scellés, procéder à tous inventaires et récollements, et faire en procédant, tous dires, réquisitions et réserves; demander la nomination de tous syndics définitifs, présenter toutes requêtes et faire tous dires et observations; faire vérifier ma créance, en affirmer la sincérité comme je l'affirme par ce présent pouvoir, vérifier, admettre ou rejeter tous titres produits par les autres créanciers, se faire rendre compte de l'état de la dite faillite, prendre part à toutes délibérations; consentir toutes remises, accorder termes et délais; traiter, transiger, composer à cet effet, signer tous actes, tous concordats ou arrangements particuliers, s'y opposer même par les voies extraordinaires; me représenter ou faire représenter à toutes audiences du Tribunal de Commerce, soit en demandant, soit en défendant sur tous incidents, remettre ou retirer tous titres et pièces, toucher tout dividende, en donner quittance, substituer tout ou partie des présentes; et généralement faire tout ce qui sera nécessaire, quoique non prévu en ces présentes; promettant l'avouer et lui tenir compte de ses déboursés et honoraires.

Fait à Londres,

“Bon pour pouvoir,”

JOHN SMITH.

Le 30 Mai, 1880.

Certifié le présent Pouvoir sincère
et véritable par le mandataire soussigné
à Londres, le

TRANSLATION.

Procuration to represent a Creditor in a
Bankruptcy.

Translation of
above procura-
tion.

Stamp.

I, the undersigned John Smith, merchant, residing at 65, Cornhill, London, hereby give power to Mr. (name of agent in France), residing at (name of street) Paris, to represent me in the bankruptcy of Pierre Duval, varnish manufacturer, and in consequence demand the affixing of the seals and withdrawal thereof, to proceed to draw up all inventories, and proofs, to make in proceeding all observations, réquisitions, and reserves, demand the appointment of definitive trustees, present all petitions, and make all remarks and observations, obtain the verification of my claim, affirm its sincerity as I affirm it by these presents, verify, admit, or reject all or any documents produced by other creditors, obtain information as to the position of the said bankruptcy, take part in all deliberations, consent to adjournments, give time, treat, settle, set off for this purpose, sign all documents, compositions, or special arrangements, or oppose the same by all legal means, represent me, or cause me to be represented, at all hearings at the Tribunal of Commerce, either as applicant or defendant in all cases, hand in or withdraw all papers and documents, receive dividends, and give receipts for same, appoint a substitute in relation to all or part of these presents, and generally do all that may be necessary, even though not provided by these presents, promising to acknowledge the same, and to pay his fees and disbursements.

Given at London,

"Bon pour pouvoir,"

JOHN SMITH.

30th May, 1880.

Practical
instructions.

Printed forms of the above *pouvoir* in French, ready stamped, can be obtained from the French Bankruptcy Court through any solicitor. The creditor must fill in his christian name and surname, and profession or business, and also the full name of the agent and that of the bankrupt. At the foot of

the power the name of the place in which the instrument is signed must be inserted. Underneath this the words "**Bon pour pouvoir**" must be written; and lastly, the full signature of the creditor and the date.

The printed forms are not necessarily essential. Creditors can copy out the French form as above on plain paper, taking care to observe the instructions as to signature, and forward same to their agent in France, where it can be subsequently stamped.

EVIDENCE.

The agent should now proceed to put in evidence establishing the claim, obtain verification thereof, and attest its sincerity. For this purpose the creditor must forward to him the above procuration, together with the documents upon which the claim is based. A statement in the regulated form is then made out and deposited, with the evidence, with the syndic, or with the proper official, at the Tribunal of Commerce, who delivers a receipt for the same. Documents required by an agent for a creditor.

If the claim is in respect of a dishonoured bill of exchange, the instrument must be lodged together with the protest and account of expenses of dishonour, if any. Dishonoured bill.

If the claim is in respect of goods sold and delivered, or in respect of a general trade account, a detailed statement must be made out from the books of the creditor and lodged, and such statement must be signed at the foot as follows:— Goods sold.

"Certifié sincère et véritable."

(Signature of Creditor.)

The various claims are examined and verified by the syndic, and if found correct are admitted. If contested by the bankrupt, the creditors, or the syndic, the claim is referred to the Tribunal of Commerce and there adjudicated upon, subject to appeal. Procedure on the Claims.

OF PRIVATE PARTNERSHIPS

AND OF

LIMITED LIABILITY COMPANIES IN FRANCE.

INTRODUCTION.

Definition.—Essentials of the Contract.

A partnership (*Société*) is a contract by means of which two or more persons agree to contribute something to a common fund, in order to share the profits arising therefrom. Definition.

This is the general definition.

The essentials of the contract of partnership are :—

1. *Each one of the persons contracting must contribute something to the partnership.*—The contribution thus made may be of money, stock, plant, real property, or even of skill and labour. The only essential of the contribution is that it should have a money value; *e. g.*, it would be possible for one member of a partnership to contribute nothing but the credit which he enjoys in the commercial world; but this, as being a means of obtaining money for the purposes of the partnership, would be a valuable contribution. The apport or contribution.

2. *Each party contracting must have a common interest.*—The meaning of this is that the subject-matter of a partnership must be one shared in common by each partner. There is no partnership, for instance, when two persons agree that one of them shall use a certain sum of money for the purposes of his own business for three years, and the other then use the same sum for the purposes of *his* business for the same time. In The undertaking must be a joint enterprise.

other words, the partnership undertaking must be a joint enterprise.

Profits the object.

3. *The object of the partnership must be the making of profits.*—*E. g.*, a mutual insurance agreement is not a partnership; it is merely a guarantee against the losses of its members, not a means for any one of them to make profit.

Profits must be shared.

4. *The profits made must be shared between the members of the partnership.*—The proportion may be arranged according to the wishes of the parties; but there must be a proportion.

5. *The object of the partnership must not be unlawful.*

General Division.

Partnerships are either civil or commercial.

Test of civil and commercial partnership.

Perhaps the best test by which to distinguish the characteristic of a partnership is to consider its object and its business. Acts of trade are characteristic of a commercial partnership; and to test the nature of a partnership more accurately, it will be found that "acts of trade" are enumerated in the Code of Commerce. (Arts. 632, 633.)

It has been decided by the Court of Appeal, that the declaration of the parties joining in an undertaking cannot of itself give to that undertaking the nature of a commercial partnership.

Chief points of difference between civil and commercial partnerships.

The following important distinctions exist between civil and commercial partnerships :—

1. No prescribed forms are necessary for a civil partnership: special forms must be observed in forming a commercial partnership.
2. In civil partnerships, the liability of the partners towards third parties is limited by the power granted to the managers or directors of the partnership; the managers have fuller powers, implied by the law, in commercial partnerships.
3. The time of legal prescription is longer in civil than in commercial partnerships. (Code Com. 64.)
4. A civil partnership, if insolvent, is said to be *en déconfiture*: a commercial partnership that stops payment must go through the *régime de la faillite* (i. e., bankruptcy resulting in *union* or *concordat*).
5. Disputes between members of a civil partnership are decided by the ordinary Courts; those between members of a commercial partnership by the Tribunals of Commerce.

Commercial or business partnerships are governed by the agreement made between the parties and by commercial law. Principles of civil law affecting partnership. There are also some principles of civil law which concern these partnerships, which should be dealt with at starting.

1. Unless otherwise specially provided by the agreement, the partnership begins as soon as the contract is formed. Formation of the contract.
2. Each partner is a debtor to the partnership for all that he has contracted to contribute to it. If the contribution is of a certain definite thing, which is lost without any default of the partner who was to contribute it, no liability attaches to him. It is otherwise if, for instance, the contribution was to be a sum of money—the loss of that does not exonerate the partner. But if the article to be contributed is one of which the value naturally becomes depreciated by keeping, the loss falls upon the partnership, not upon the contributor. Liability of partners in respect of their apportionment.

It may be noted, that when a partner has agreed to contribute a definite sum of money, interest upon that sum becomes due from him to the partnership immediately, whereas, in ordinary cases of debt, interest only begins to run from the date of the commencement of legal proceedings. Interest on apportionment.

3. If a partner appropriates even temporarily part of the partnership funds for his own profit, he is bound to restore the amount withdrawn with interest from the time of withdrawal. He would also be liable to an action for damages at the suit of his partners if the partnership sustained any loss or missed any bargain by reason of his conduct in withdrawing a part of the funds. Appropriation of partnership funds.
4. Each partner has a claim against the partnership for all sums of money expended by him in the partnership business; for obligations incurred *bonâ fide* for the business; and for compensation for any risks necessarily incurred by him on behalf of the business. Rights of partners *inter se*.
5. If no proportionate share of profits and losses has been assigned to each partner, the law prescribes that each shall receive profits proportioned to his contribution, and contribute for losses in the same manner. If one member has contributed his skill Rule of law as to profits in default of agreement.

Rule as to
profits.

and labour only, his share is reckoned equivalent to that of the partner who contributed the smallest amount to the common fund. However, the proportion of profits can be arranged between the partners according to their own wishes. A stipulation exonerating from liability from losses any member will be treated as illegal and void, except in the case of a member who contributes only his skill and labour.

DIVISION OF SOCIÉTÉS.

The four kinds
of commercial
partnerships.

There are four kinds of partnerships in French law:—

1. The *Société en nom collectif*.
2. The *Société en commandite simple*.
3. The *Société en commandite par actions*.
4. *Sociétés anonymes*.

The division in the Code (Article 19) is:—

1. *En nom collectif*.
2. *En commandite*.
3. *Anonyme*.

A fourth division is subsequently mentioned, the *Association commerciale en participation* (Art. 47).

Under this division it would be necessary to distinguish the *Société en commandite simple* from the *en commandite par actions*; and the *Société à capital variable* might be added, which, however, is usually a civil, and not a commercial partnership.

The law of May 23rd, 1863, which established limited liability partnerships (or Companies), was repealed by the law of July 24th, 1867.

The first division, with which we now proceed to deal, is the

SOCIÉTÉ EN NOM COLLECTIF.

This form of partnership will be considered under the following heads:—

Private part-
nership firm.

1. The name of the firm (*raison sociale*).
2. Distinctive characteristics of this *Société*.
3. Liabilities of the members and of the firm towards third parties.
4. Domicil of the *Société*.
5. Legal proceedings.

Definition.

The *Société en nom collectif* is a partnership formed by two or more persons for the purpose of trading as a firm. The name or style of the firm

The *raison sociale* is the name of the partnership firm, the name by which the partnership is known to the rest of the world. This name is used by the firm in all liabilities incurred by it, the name in which it is sued, &c. For all purposes of the partnership this corporate existence is essential. *Durand Frères*, or *Durand Frères et Compagnie*, is an instance. There is no need to enumerate all the members who actually compose the firm.

Still, the names used as the style of a firm must be those of persons actually members of the firm. If other names are used without the sanction of the persons to whom they belong, this would be a fraud on the public. But if a person, not a member, knowingly allows his name to be thus used, he will be held bound jointly and severally with the real partners for all liabilities in favour of parties contracting with the firm. What names may be used.

The real characteristic of the *Société en nom collectif*, as distinguished from other partnerships, is what is called in French law the *solidarité* of the members, i.e., each member has a joint and several liability towards all creditors of the firm, and a creditor can sue each individual member for the whole of his debt. Joint and several liability of the partners.

That this liability of the members distinguishes the *Société en nom collectif* from other forms of partnership may be seen in the fact that, in a *Société en commandite* the members are severally liable only to the extent of their contributions (thus resembling a limited liability concern); and in the *Société anonyme* members are liable to the extent of their interest only. Distinction between *en nom collectif* and *en commandite*.

The *Société en nom collectif* may therefore be defined more accurately than before, as "a partnership established between two or more persons jointly and severally liable for the debts of the business, having for its object the carrying on of trade as a firm." Further definition.

It is quite possible for a partner, when contracting with a third party, to bind himself personally without binding his firm, if the third party agrees to accept his responsibility alone. But it is the better opinion that no such stipulation, doing away with the joint and several liability of the members, can be inserted in the partnership deed. Liability towards third parties.

Solidarité is, in short, of the essence of the contract in this form of partnership. This special point, however, has not, we believe, been actually decided in practice by any Court, and is not one which is likely to arise.

To continue: In order to bind the partners thus in any contract, the engagement must have been entered into—

Who can
contract for the
firm.

(1.) By persons who have a right to contract for the partnership. These may be members of the firm who have been entrusted with the management of the firm's business. They are called *associés gérants*. Their power is given to them either by a clause in the partnership contract—in which case it can only be revoked on some reasonable ground; or by an arrangement after the contract has been made—in which case it is, like all powers, liable to be revoked at any time. If no such arrangement is made, each member is considered as the agent of the rest for the purposes of the partnership.

(2.) The contract must be entered into as and on behalf of the firm.

Signature of or
on behalf of the
firm.

It is, of course, usual to sign a contract in the name of the firm (*raison sociale*), but this formula is not absolutely binding, e.g., a partner contracting "as well for himself as for his co-partners," will bind the firm, and it may often happen that the terms actually used by the contracting partner are more explicit in imposing an obligation on his co-partners than the firm name would be.

Power of one
partner to bind
the rest.

It is important to notice that the partner who has entrusted to him the right to sign the name of the firm to any documents can bind his co-partners by such signature, even if he wrongfully use it for purposes of his own business and not for the purposes of the firm. The Court of Appeal has even decided that such a partner, appointed to manage the business of the firm, can use the firm's signature to discharge his personal debts to a third party. Of course he remains personally liable to his co-partners, but their duty, said the Court, was to choose a more honest man as their manager. In spite of this decision, which lays down in effect that Art. 22 of the Code of Commerce is absolute in its meaning, distinguished writers still maintain that, unless the manager so signing does contract for the purposes of the firm, he alone will be responsible. In English law the contract must, broadly speaking, be within the scope of the partnership business, and it is this principle which is defended by eminent French jurists as against the decision above quoted. However, if the partnership has pro-

fited by the transaction, the third party or creditor will, in any case, have his remedy against the firm. If the manager signs for the firm the ordinary right of action vests in the creditor.

If the signature is merely in the manager's own name, the Indirect action. action is called indirect, *i.e.*, the creditor would have an action in the name of the partner, with whom he personally contracted, against his co-partners.

Lastly, the power to sign and contract for the firm may be *Procuration.* entrusted by a special power of attorney (*procuration*) to a stranger or person not a member. His signature must in all cases be preceded by the words *par procuration*. If this is omitted, the person signing might make himself personally liable on the contract.

The next question is:—

What acts can be done by the managing partner acting for the rest ?

As a general answer, it is obvious that, unless specially limited, the manager has full power to perform all acts relating to matters of trade which are necessary to carry out the objects for which the partnership was formed. Thus, he can buy and sell goods, make and receive payments, draw, accept and indorse bills of exchange, &c. Power of the managing partner.

As a general rule, the manager cannot deal with real property (*immeubles*) which belongs to the partnership, even if his dealing with it would be profitable to the firm. Rule as to realty;

There is a difference of opinion as to the power of a manager to compromise or arrange any legal or other dispute between the members of the firm and third parties. In all cases it would be safe for the manager to consult his partners, and to obtain their special sanction before taking any such proceeding. As to compromise.

The practical rule then for the *associés gérants* is chiefly, that in matters of doubt they should always obtain the consent of their co-partners before acting on their own responsibility. Consent of co-partners advisable.

The domicile of a firm is in the place where its principal place of business is situated, and where its affairs are carried on. The Court of the district in which the principal house or head office is situated is the Court before which the firm ought to be sued. Domicil of the firm.

Actions against the firm must be brought in the name of the firm. The writ, or notice of it, is served at the office of the firm; if it has no place of business, then upon one of the Actions against the firm; service of writ.

partners at his residence. Notice, or a single copy of the writ, mentioning the defendants under the name and style of their firm, is sufficient. It is not necessary to enumerate all the individual members of the firm, which in some cases a plaintiff might be unable to do.

II.—SOCIÉTÉ EN COMMANDITE SIMPLE.

Origin of the
Société en
commandite
simple.

This form of partnership, the rules of which were defined, and the name established by the *Ordonnance* of 1673, is of very ancient origin, and can be traced back to the middle ages. Its characteristics are best illustrated by the old practice. A person with money or goods entrusted them to a merchant or master of a vessel, in order that the latter might effect purchases or sales on their joint accounts, a proportion of the profits being given to the active partner, the merchant, or ship's captain, &c., and the rest being reserved to the person who may be called the "capitalist," or "dormant partner" in the venture. The latter's risk and liability only extended to the amount of money or value of the goods furnished by him.

Definition.

Definition.—The *Société en commandite* is a partnership formed between one or more persons who are jointly and severally liable to all creditors on the partnership contracts, and one or more persons who supply money (i.e., capitalists) whose liability only extends to the amount of their contribution.

Active and
dormant
members,
commandités and
commanditaires.

In this partnership there are two distinct elements—the active members, with unlimited liability attaching to them; and the inactive members, whose liability is limited. *E.g.*, A. and B. are the active members. To them C. and D. advance a sum of 10,000 fs. each. C. and D. contract never to interfere with the management of the business, and are not to be responsible for a greater amount than the 10,000 fs. which each furnishes. A. and B. are the active members, who engage to carry on the undertaking, and do all the work of the partnership business, taking on themselves an unlimited liability in respect of the creditors of the firm.

These active members of the partnership are called *commandités** or *complémentaires*.

* See the contract *mandatum* in Roman law.—Just. Instit. lib. iii. tit. 26.

The dormant members who supply the funds are called *commanditaires*.

It must be noted that the *commanditaires* cannot, as in the case of a *Société en nom collectif*, supply as their contribution their credit, or work and labour. It is of the essence of this partnership that the *commanditaires* have nothing whatever to do with its management. Money, goods, real property, or the like, are contributed by the *commanditaires*.

The *apport* of the dormant members.

The simplest form of this partnership is between two persons. A., active and responsible; B., dormant, and with limited liability. If there are several *commandités*, or active members, there is a combination of this partnership with the one previously dealt with. As between themselves, the active members form a *Société en nom collectif*, being jointly and severally liable on the firm's contracts and engagements; while the limited liability of the *commanditaires* remains unaltered, or if there are several of them, each remains liable for the amount which he furnishes to the partnership, and for no more.

Combination of this *Société* with the preceding.

Thus the *Société en commandite ordinaire* is distinguished from the *en commandite par actions* simply by the fact that the capital of the latter is divided into shares, that of the former is not.

Point of distinction.

This partnership has, in the eye of the law, a corporate existence. When the contract, *e.g.*, has been made between A. and B. (A. active, B. dormant), A. cannot engage in the business on his own account, but on account of the partnership only. This partnership is also carried on under the name and style of a firm. The name can only include the active member, whose liability is unlimited; otherwise, the public would be deceived, if the *commanditaires*, whose liability is limited, were permitted to figure as active members. In fact, if a member allows his name to be used for the style of the firm, he will be treated as jointly and severally liable in respect of third parties and creditors.

Corporate existence of the partnership.

The *commanditaires* are treated by the law as partners, and not as simple lenders, or as persons who have advanced money. The result of this is that—

Results of the principle that *commanditaires* are not merely lenders of capital.

- (1.) All disputes between the active and dormant partners must be settled by the Tribunal of Commerce and not by the Civil Courts.
- (2.) If a *commanditaire* stipulates for the withdrawal of

the amount which he has advanced, the title of any creditors of the partnership is superior to his title. The creditors have a lien upon the money invested by him, and until they are satisfied he cannot withdraw it.

Power of the active members to compel payment of the *apports*.

The active members of this partnership can, at any time, compel the dormant members to contribute in full the amount which they have undertaken to furnish. It is questioned whether creditors having claims against the partnership can compel the *commanditaires* to furnish their quota, if unpaid. So long as the active members continue to carry on the business of the firm in a proper manner, meeting all their engagements, &c., the creditors can have no claim against the *commanditaires*.

Rights of creditors in case of insolvency.

But a question arises, in the event of the partnership becoming insolvent and suspending payment, whether the creditors can, by a direct action, compel the *commanditaires* who have not completed their contribution to pay the deficiency, or whether the creditors have only an indirect action, *i.e.*, must sue in the name of the active members, taking all the rights of the latter as against the *commanditaires*.

Practice of the Courts in cases of insolvency.

The authorities on this point, both text writers and Courts, are divided. But the later decisions confirm the opinion that the creditors can proceed directly against the *commanditaires* for the balance (if any) of their contribution. It may therefore be laid down that the practice of the Courts at the present day is to give the creditors the right of a direct action in such cases.

Necessity for the distinction between direct and indirect actions.

It may be remarked that a real distinction is to be drawn between these two different modes of action. If the action is direct, the *commanditaire* cannot set off or raise, as against the partnership creditors, any counterclaim which he could raise against the active members. If the creditor merely stands in the place of the active members, he takes their place subject to all rights and claims which the *commanditaire* would have against them. The later decisions are therefore more favourable to the position of the creditors, and certainly tend to lessen the possibility of fraud and collusion between active and dormant members of the partnership, while in most cases no special hardship would fall on the *commanditaire*.

Analogy of principal and agent.

It may be added that the relation between *commanditaires* and *commandites* corresponds to that of principal and agent

(*mandant et mandataire*). The agent binds his principal *directly* by his acts; it would therefore follow that a right to proceed *directly* against the *commanditaires* ought, by analogy, to vest in the creditors of the partnership.

Next, it must be remarked that the *commanditaires*, though members of a trading partnership, are not themselves *traders*. On this point most authorities agree.

Traders and non-traders.

But a question arises, does the non-trader who promises to advance money for this form of partnership thereby perform an act of trade which would render him subject to the jurisdiction of the Tribunal of Commerce?

Jurisdiction of the Courts.

It is maintained on the one hand, that his advance is of a peculiar kind and does not bind him as a trader; that this liability undertaken by the *commanditaire* is not specified in Arts. 632 and 633 of the Code of Commerce, and that the object of all the legislation on the subject has been to allow non-traders to facilitate commerce without actually becoming traders—in fact many persons, whose position forbids them to trade, may invest their capital in this manner.

However, the contrary opinion seems preferable and better established. The decisions are indeed conflicting, but they belong to an early period of the present century. The Code expressly says that *commanditaires* are partners; they advance capital, but they have the character of partners. Further, to support the former opinion, it must be shown that the *commanditaire* is a simple lender of money. But a loan can only be made at a fixed rate of interest, or at all events the rate, which must not be exceeded, is fixed by law; the *commanditaire* has a right to profits, which may enormously exceed the ordinary rate of interest on money lent. Secondly, the person lending acquires the rights of a creditor plus a right to interest; the *commanditaire*, receiving a proportion of profits, is a joint-owner of the partnership property if the contract is dissolved. Thirdly, the lender has a right to have his capital replaced, and in case of insolvency, can prove with the rest of the creditors: the *commanditaire* risks losing his contribution in payment of the partnership debts, and cannot prove against the firm. Again, the lender merely takes his interest when due, and receives back his capital according to agreement: the *commanditaire* is summoned to the meetings of the firm, and has a voice in the settlement of the dividend, &c. All the liabilities and rights of the *commanditaire* make him a genuine.

Reasons in favour of treating the advance made by a *commanditaire* as an act of commerce.

Difference between this advance and a loan.

partner, and though his undertaking is not included in Arts. 632 and 633 of the Code of Commerce, there can hardly be a doubt that it enters into the spirit of that enactment.

On the whole then, the undertaking to furnish capital for a commercial enterprise in this form of partnership renders the person so undertaking subject to the jurisdiction of the Courts of Commerce.

Creditors
cannot claim
dividends
distributed
prior to
insolvency.

It has further been questioned, whether the creditors of a partnership of this kind can claim the dividends, or any part of the dividends, received by a *commanditaire* in the event of the insolvency of the firm. This question is answered in the negative. The law expressly limits the liability of the *commanditaire* to the amount of the capital advanced by him to the firm. And further, if a creditor, whose claim had its origin in a transaction which took place in the seventh year of the existence of the firm, could demand from the partners the profits of the previous six years, he would thus be granted a lien on profits which were made before the existence of his rights—a violation of the commonest principles of the law.

Commanditaire
must not act in
the business,

The *commanditaires* must remain completely outside the management of the partnership business. Their liability is limited: if they were allowed to act as managers, any person dealing with them would be liable to be deceived, believing that he was contracting with a person whose liability was unlimited, or was, at any rate, joint and several with his co-partners. And the prohibition to the *commanditaires* extends, not merely to acts done by him on behalf of the firm in his own name, but also to prevent him acting as manager *par procuration*; for this, too, would expose the public to risk of deceit in dealing with the firm.

but may be an
employé in it; .

On the other hand, there is nothing to prevent the *commanditaire* from selling to the firm or buying from it, as he may with any other house of business. He may also be engaged as an *employé* in the firm; provided always that he is not, by reason of his employment, put forward to third parties, who contract with the firm, as a responsible partner. A *commanditaire* might thus be a clerk, book-keeper, &c., in the firm to which he had advanced a contribution, according to this form of partnership.

or give advice,
&c.

This was settled by the law of May 6th, 1863, by which it was also enacted that the partner who was a *commanditaire* might assist the business of the firm by giving his advice,

examining the books, and exercising a general supervision over the internal affairs of the firm. The essential point to be always observed is, that the *commanditaire* must not be brought into relation with the outside public in such a way as to mislead them with reference to his real position.

Incidentally, it may be added that the amounts of the contributions are published on the formation of the partnership, but the names of the contributors are unknown to the outside world. Amounts of apports are published.

If the *commanditaire* interfered personally in any dealings with persons who contracted or had business with the firm, he was, by the Code of Commerce, held liable for all the debts and undertakings of the partnership. This was, as it were, a penalty for his interference, and was modified by the law of 1863. As it now stands, the first provision is to forbid all active interference on the part of the *commanditaire*. If he does interfere, and come into relation with third parties, he will be judicially declared liable for all debts and engagements incurred and entered into in reference to the acts done by him as part manager. If these acts are numerous and of importance, the Courts can declare him jointly and severally bound with the rest of the partners for all the partnership debts and liabilities. Further, he will be treated as a trader, the importance of which is that the creditors of the firm can proceed against him in bankruptcy (*faillite*), and that other obligations, *e.g.*, the duty of keeping strict accounts, and of publishing his marriage settlement, will be imposed upon him. Liability of commanditaire who acts as gérant.

The whole of this part of the law is intended to protect strangers who contract with the firm. Therefore, if a *commanditaire* is held jointly and severally liable with the active partner, he has a remedy by action against the latter for any surplus that he may have to pay over and above the contribution which he guaranteed. Liability of members interest.

3.—SOCIÉTÉ EN COMMANDITE PAR ACTIONS.

This second division of the *Sociétés en commandite* has considerable similarity with the first. The managers and managing members are jointly and severally liable for the engagements of the firm, and the *commanditaires* only liable to the extent of their interest in the concern. But it differs in the point that its capital is mostly held in shares by the *commanditaires*; and the individual shares are of an uniform En commandite par actions.
Capital divided into shares.

value, although one member may hold more in number than another. Further, the chief distinctive feature of this *Société* is that it marks the point of departure leading from partnerships to Companies. The relations, *inter se*, of the members belong to the characteristics of Companies rather than of ordinary partnerships.

Shares transferable.

' As distinct from the *intérêt*, or interest held by a *commanditaire* in a *Société en commandite simple*, the *action* or share is an assignable property. The holder is always at liberty to sell or transfer his share to a third person not a member, and thus to substitute the latter in his place, and to invest him with his position and rights. The *intérêt* held by a *commanditaire* in the other kind of *Société* is not transferable. The Code recognises this assignment of shares, and specially provides for the manner in which it is to be effected; and other legislation, such as the revenue laws of 1796, 1850, and 1857, recognises the same. The *intérêt* then may be described as a transferable share.

Nominative shares.

These shares are either "nominative," or "to bearer." Nominative shares are those which are made out in the name of the person who is to hold them, and have his name expressed on them. Shares to bearer substitute for the name of the holder the words *au porteur*, and *primâ facie*, the person holding them is presumed to be the owner.

Shares to bearer.

Modes of transfer.

Shares of the former kind are transferred by a declaration of transfer entered on the Company's register, and signed by the transferor or his authorised agent. The other shares pass, like ordinary chattels, by simple delivery, and possession is *primâ facie* evidence of title, according to the maxim of the Civil Code.*

It may be remarked that this latter form of shares is rarely to be met with, but it is not prohibited by the Code.

Regulations of the Law of 1867.

The first division of the law of July 24th, 1867, deals with this kind of *Société*.

In substance, the regulations are as follows:—

1. Limitation of the value of the shares;
2. Restrictions on the issue of shares to bearer;
3. The whole capital must be subscribed for, and each shareholder must pay up a certain proportion;
4. The liability of shareholders and their assigns, the

* Art. 2,279.

appointment of a committee of inspection, restrictions on the mode of transfer of shares, and other points.

The omission to observe any of these regulations renders the *Société* null and void; and thus a serious responsibility is imposed upon the managers and upon the members of the committee of inspection, who must be careful to see that they have been strictly followed. Penalties for non-observance.

We now proceed to deal with these points in detail. Value of shares
No shares can be issued of a less nominal value than 100 fs., if the capital of the *Société* does not exceed 200,000 fs.; nor less than 500 fs., if the capital is above that amount.

Coupons of shares are subject to the same regulation. It is obvious that, without this, the law would have been evaded with impunity. Coupons.

The entire capital of the Company must be subscribed before the Company can be finally established. This provision is made in order to serve as a guarantee that the undertaking is at least considered genuine by the shareholders. Subscription of capital.

Each shareholder is bound to pay up one-fourth of the value of the shares for which he has subscribed. One-fourth to be paid up.

It is not enough that one-fourth of the whole capital should be paid up, *e.g.*, by some members paying more and others less than one-fourth; the terms of the law must be strictly complied with in the case of each individual member. How reckoned.

Before any subscriptions are invited, the rules or Articles of Association are drawn up in the form of a deed, either an *acte authentique* or *sous seings privés*. If in the latter form, two originals suffice, whatever be the number of the members of the *Société*. Articles of Association.

After the subscriptions have been taken up and one-fourth of the value of the shares paid by the subscribers, the manager is bound to make a statutory declaration to that effect in a notarial deed, and to annex to it—1. A list of the subscribers. 2. The position of the payments already made. 3. One of the deeds containing the Articles of Association, if *sous seings privé*; or a copy of the deed, if notarial, and if acknowledged by a notary other than the one who takes the statutory declaration. Declaration to be made by the manager.

When the notary who draws the deed also witnesses or takes the declaration, the deed need not be annexed.

The other original of the deed, if *sous seings privés*, is deposited at the head office of the Company.

Conversion of shares.

With regard to the conversion of shares into shares payable to bearer, the law of 1867 enacts that this conversion can be effected by a special clause to that effect in the original Articles of Association, after one-half has been fully paid up; a resolution agreeing to and authorising this conversion must be passed at a general meeting.

Liability of owners of converted shares.

There is a further enactment, which provides that, whether these shares remain nominative after this resolution, or are converted into shares to bearer, the original owners who have assigned their shares, and the persons to whom they assigned them before one-half was paid up, remain liable to be called upon for payment in full of the balance at any time during a period of two years from the date of the resolution.

With reference to this clause, there are three positions to consider:—

Various alternatives.

1. If the rules permit the conversion of shares to those "to bearer," after one-half has been paid up, and a general meeting has passed a resolution allowing it, the rights and obligations differ accordingly as the assignor has assigned his shares before or after the payment of one-half of their value. If before, both he and the assignee are held liable for the full balance during the period above limited. If after, the assignor is free from liability as soon as the assignment is complete; and further, if his assignee transfers the share again, his liability thereupon ceases.
2. The rules may permit the conversion, but the general meeting may refuse to sanction it. The shares then remain in the name of the original subscriber; and his liability to calls, either for the whole amount or for the balance in full, attaches to him for a period of two years from the date of the general meeting which refused to sanction this conversion. The same liability attaches to the assignee.
3. If the rules do not permit the conversion, and consequently the meeting cannot authorise it, the shares remain nominative, and the same liability to calls as in (2) remains.

Shares on which one-fourth has not been paid up.

Further, shares on which one-fourth has not been paid up are declared by the law to be non-negotiable, *i. e.*, not transferable by any of the ordinary commercial methods, for instance,

by indorsement, or by transfer on the Company's register. At the same time they can pass by any assignment, such as a deed of assignment or gift, recognised by the Civil Code.

It often happens that one of the members of the *Société* contributes for the purposes of the *Société* something which does not consist of money, or the value of which cannot be calculated accurately in money, or else reserves to himself special privileges in consideration of that which he contributes. An instance would be when one of the members granted the use of a house for the business of the Company or partnership.

The apport of members.

In all such cases, two meetings of the members must be convened. At the first, the contribution (*apport*) must be considered and valued, and the privileges reserved must be examined, and so far as possible, calculated in their value; at the second, these valuations, &c., must be confirmed. Before the second meeting is called, a printed report of the position and the terms submitted to the first meeting must be issued, and have been at the disposal of the shareholders for five clear days at least.

Examination and approval of the apports at two meetings.

At the meeting the statutory majority must be present, consisting of or representing one-fourth in number and one-fourth in value of the shareholders and the shares.

Statutory majority.

A resolution dealing with this subject must be passed by a clear majority (*i.e.*, at least one-half plus one) of those present; and this majority must represent one-fourth of the whole body of shareholders. The majority in value must also be contained in the numerical majority, *e.g.*, if the capital is two millions, those who vote for the resolution which is carried must represent 500,000 francs.

Numerical and in value.

Members who are personally interested in the contributions or privileges under discussion have no right to vote about them.

Disqualified voters.

Until this confirmation has been passed the Company is not established.

No business can be transacted by the Company until the committee of inspection has been appointed. Any violation of this rule involves a fine of from 500 to 10,000 fs. upon the person convicted of disregarding it.

Committee of inspection.

The committee must be composed of at least three persons, shareholders, appointed by the general meeting immediately after the definite establishment of the Company. The first committee can only hold office for one year; any subsequent

Term of office.

committee can be elected for such period as is prescribed by the Articles of Association.

Since no provision is made by the law for the mode of appointing the committee, a numerical majority at the general meeting which appoints it will suffice. This follows the rule of common law.

Preliminary duties of committee.

The committee is bound, as one of its first duties, to see that all the requisite conditions have been fulfilled, otherwise its liability becomes the same as that of the managers.

The various omissions which cause a *Société* to be declared null are enumerated below, under the division *Sociétés anonymes*.

Rights of members and third parties when the *Société* is declared null and void.

The nullity of the Company is no bar to the rights of third parties against the members, but it bars any claims of member against member, or of members against third parties.

It is generally allowed that the law only meant to bar any future claims in such cases, and that acts already done in pursuance of the partnership deed are not counted void, even as between members of the partnership. At any rate, future claims or disputes would probably be decided by the Courts upon the general principles of equity, and not upon the terms of the deed which has become void.

Power of the Court to apportion the liabilities.

When the *Société* is declared null and void, the Courts have power to declare the first committee of inspection equally liable with the managers, or to apportion the liability between them in such way as may seem just.

Duties of the committee of inspection.

The duties of the committee, as defined by the law of 1867, are—

Report.

1. To examine the books, accounts, ledgers, &c., of the *Société*.
2. To present an annual report, which must mention any irregularities or mistakes which they find in the accounts, &c., and must (if necessary) suggest reasons against the distribution of the dividend declared; the dividends must of course always be taken from the profits and never from the capital; and fictitious dividends can be recovered within five years from the shareholders if no *inventaire* has been taken, or if the dividend was declared in spite of the results shown by the *inventaire*.
3. To call a general meeting and demand the dissolution of the *Société*. The general meeting alone has the right to decide for or against the dissolution.

Dissolution.

No personal liability is incurred by the committee of inspection in respect of their official acts and the execution of their duties. They are only responsible each for his own faults. They are not civilly responsible for offences (*délits*) committed by the managers.

Penalties—

1. If shares are issued at less than 100 or 500 fs., according to the capital of the *Société*;
 2. If the *Société* is established before the subscription of the whole capital, and before each member has paid up one-fourth of his shares;
 3. If the subscriptions and payments are not properly certified;
 4. If the shares are made out to bearer, without following the conditions and formalities prescribed by the law;
- A fine of not less than 500 and not more than 10,000 fs.
5. Any dealings in such shares as mentioned in Nos. 1, 2, 3, 4. Same penalty.
 6. Acting as accessory to such dealings, or publishing the same. Same penalty.
 7. If the manager begins the business of the *Société* before the election of the committee;
 8. Contributing in any way to create a fictitious majority at a meeting. Same penalty.

In No. 8, a sentence of imprisonment not less than 15 days and not more than six months may be also inflicted.

9. Publishing sham subscriptions, or using other fraudulent means to obtain subscriptions.

Penalties of swindling (*Escroquerie*, Art. 402 to 405, *Code Criminel*).

10. Fraudulent distribution of dividends by the managers. Same penalties.

These penalties may be mitigated if the acts are found to be done under extenuating circumstances.

Shareholders representing one-twentieth at least of the capital may select one or more agents to take their place in all legal proceedings, either as plaintiffs or defendants. However, if the action is brought by one set of shareholders against another set, or by a single shareholder against the manager, this procedure cannot be adopted.*

* The *Revue de la Finance et de l'Industrie* estimates the total capital of Companies, with a capital of upwards of 106,000 fs., created during the

SOCIÉTÉ ANONYME.

| | |
|---|---|
| <i>Société Anonyme.</i> | The name <i>anonyme</i> is applied to this form of partnership or Company because the members are unknown to the public, and also because it has no firm name or style containing the names of members who would be responsible for its operations. It is an association of capital. Its name is taken from the object of the undertaking, <i>e.g.</i> , <i>Compagnie du chemin-de-fer de Lyon, La Banque de France, &c.</i> |
| Distinction of this from the preceding. | The difference between a <i>Société anonyme</i> and a <i>Société en commandite</i> is, that in the latter some of the members, the <i>commandites</i> , are known to the public; in the <i>Société anonyme</i> , none of the members is known by name. |
| Division of the capital. | The capital of a <i>Société anonyme</i> is divided into shares or coupons of shares, which (according to Code Comm., Art. 34) should be of equal value. (<i>See Appendix.</i>) |
| Law of 1867. | The explanations already given of shares in the <i>Société en commandite par actions</i> apply also to the shares in this <i>Société</i> . Before the law of 1867, no such <i>Société</i> could be formed without the authorisation of the government. At present this is unnecessary. The statute contains instead a sufficient number of restrictions and regulations for the formation of <i>Sociétés anonymes</i> in the interest of the public and for the prevention of groundless speculations. |
| Directors. | There being no individuals who are entitled by their position to direct the Society, directors must be appointed by the shareholders. The directors have simply the position of agents, and are limited by the powers conferred upon them, which, like those of all agents, are revocable, and they cannot be appointed except subject to revocation, and only for a short and limited period. |
| Their powers. | Directors are chosen from the members of the Company. |

past year, at 2,340,197,000 fs., or in English money, £93,608,000, which exceeds by £2,000,000 the total capital of Companies started in England during the same period. Of this sum, 1,207,189,000 fs. was the capital of Companies started during the first six months, and 1,135,008,000 fs. that of the second half of the year. An analysis of the items comprising the vast sum of money thus invested gives the following results:—Banks, 415,400,000 fs. (£16,717,000); insurance Companies, 28,600,000 fs.; metallurgical Companies, 82,725,939 fs.; railway and other carrying Companies, 98,928,000 fs.; mining and quarrying Companies, 44,500,000 fs.; lighting and water Companies, 19,400,000 fs.; newspapers, 33,200,000 fs.; land and house property Companies (*Sociétés immobilières*), 173,427,000 fs.; miscellaneous, 238,817,500 fs.—(*January, 1882.*)

If, however, the Articles of Association allow it, a director so chosen can appoint a stranger to act for him, being himself responsible to the Company for the acts done by the person so appointed.

The directors' duties being those of ordinary agents, they bind the Company but not themselves by their contracts. Third parties have no remedy except against the Company for contracts entered into by the directors on its behalf.

Their contracts binding on the Company.

The shareholders' risk in this Company is limited to the amount of their interest in it.

Limited liability.

We now proceed to sketch the chief provisions of the Law of 1867.

A *Société anonyme* cannot be formed by less than seven persons; an association of less than seven members must be *en nom collectif* or *en commandite*.

Number of Members.

The stringent and salutary rules already stated in reference to *Sociétés en commandite par actions* apply also to the *Société anonyme*, i.e., as to the amount of the shares, the subscription of the capital, the payment by each shareholder of the fourth part of the value of his shares, the report of the subscriptions and payments, and the documents to be exhibited with the manager's statement.

Subscription of capital.

Payments.

In the *Société anonyme* this statement is made by the promoters, and submitted with the documents to the first general meeting.

Further, the same rules prevail in both kinds of *Société* with regard to the form of the shares, the liabilities of subscribers and their assigns, the transferability of the shares, the examination and approval of the *apports* and any special privileges by two general meetings. The *Société* is not legally constituted and established until the last of these items has been attended to and the first directors and managing committee have been chosen and have accepted their posts.

Similar rules in the *Société en commandite par actions*.

Whether there are *apports* to be approved or not, the promoters must call a general meeting immediately after the declaration of the subscription and the payment of the call of one-fourth by the shareholders, for the appointment of directors and the committee. A director cannot be elected for more than six years, but may be re-elected, if not forbidden by the Articles of Association.

First general meeting.

The promoters may nominate themselves or any of them in the Articles of Association to be directors; but if so, can only be elected for a term of three years.

First directors.

Directors' shares.

The amount of shares which must be held by a director is fixed by the Articles of Association. These shares are in full applied to guarantee all the acts done in the management of the Company: they are nominative (*i. e.*, made out to the person named in them), inalienable, stamped as inalienable, and deposited in the *caisse sociale*. Third parties are thus protected in their dealings with the Company.

Liability of directors.

The responsibility of the directors is under no circumstances personal in their contracts on behalf of the Company; and the fact that they are shareholders makes no difference. As shareholders, their liability is under all circumstances limited to the amount of their shares; as directors or agents, they are not liable either as principals or collaterally.

How qualified.

This principle must be taken with the qualification that the directors must have faithfully performed the trust imparted to them, and must not have exceeded their powers; in such a case, they are personally liable for any prejudice caused by their acts.

Mismanagement.

Towards the Company the directors are liable jointly and severally for mismanagement; as, for instance, if they have distributed fictitious dividends, whether with intent to defraud or not; and one director is in this case liable for the act of another, unless he has formally stated his disapproval of the dividend.

Managing committee.

The control of the Company belongs to the majority of the shareholders, who appoint a committee of inspection (*commissaires de contrôle*) or managing committee. This committee is appointed by the general meeting for a term of one year only; occasionally a single individual is appointed *commissaire de contrôle*, and even a person who is not a shareholder.

Proceeding in default of appointment.

If the general meeting fail to appoint, or the persons so appointed refuse to act, application may be made to the President of the Tribunal of Commerce of the district by any member.

Duty of the committee.

The chief duty of this committee is to examine the books of the Company and to present to the Company an annual report on the position and the balance-sheet of the Company, as also on the accounts rendered by the directors. This report is absolutely necessary; without it, the directors' accounts and balance-sheet cannot be passed.

Its liability.

The committee's liability is measured by the powers entrusted to them; the members are responsible for any mismanagement, and are bound to make it good in full.

The directors are also bound to draw up, every six months, an abstract of the assets and liabilities of the Company. They must also take stock in the same way as all traders are bound to do. The directors' accounts and inventory are presented to the committee at least six weeks before the general meeting.

Each shareholder has a right to a copy of the accounts and report a fortnight before the general meeting.

Each year one-twentieth at least of the net profits must be set apart as a reserve fund, unless the reserve fund has reached the tenth of the whole capital.

If three-fourths of the subscribed capital of the Company has been lost, the directors are bound to call a general meeting to decide whether the Company is to be wound up. It is not compulsory on the meeting to decide in favour of a dissolution, the question is left entirely to their discretion. If, however, the directors neglect to call this meeting, any shareholder can apply to the Court to pronounce the *Société* dissolved.

If from any circumstances the number of shareholders falls below the prescribed sum, and remains so for one year, any member can, after the lapse of the year, apply to the Court for a sentence of dissolution.

The resolutions at any meeting must be passed by a majority of those present. Minutes of the meetings and of the names of those attending are to be kept.

A holder of shares is not, *ipso facto*, admissible to a meeting, after the Company has been definitely established; the Articles of Association prescribe the quota of shares which entitles the holder to be present and take part.

However, at the meeting which deals with the approval of the *apports*, or the nomination of the first directors and committee, every shareholder has a right to be present and vote.

The Articles of Association also prescribe the proportion of shares which qualify for a vote, and the number of votes which a shareholder may have in respect of his shares. At the meeting for approval of *apports*, &c., no person may have more than ten votes.

In an ordinary general meeting, one-fourth of the shareholders constitutes a *quorum*.

In a meeting for approving the *apports*, one-half must be present or represented.

If at an ordinary meeting a *quorum* is not made up, an adjourned meeting must be called, and its resolutions are valid, whatever number of shareholders attend it.

Half-yearly
report.

Reserve fund.

Loss of three-
fourths of the
capital.

Diminution of
numbers.

Majority;
minutes.

Right to vote,
how decided.

Quorum—

at special
meetings;

adjourned
general
meeting;

Quorum—
adjourned
special
meeting ;

If at the meeting called for the approval of the *apports*, &c., the proper quorum is not formed, the meeting can only pass preliminary resolutions. An adjourned meeting must be called, being twice advertised one month in advance, at intervals of a week, and in the advertisement the resolutions adopted must be published. The adjourned meeting can pass these resolutions definitely if one-fifth of the shareholders are present.

for altering
Articles of
Association.

A quorum of one-half is necessary for passing resolutions to alter the Articles of Association, or for continuing the Company in existence beyond the term fixed, &c. The adjourned meeting, if requisite, must be attended by the same quorum.

When the
Company may
be declared
void.

The Company is declared null and void—

1. If the nominal value of the shares is below the prescribed amount, *i.e.*, 100 fs. when the capital is not more than 200,000 fs., and 500 fs. when the capital is above that amount.
2. If the total of the capital is not subscribed, or if the shareholders have not paid up one-fourth of their shares.
3. If the subscriptions and the payments have not been certified by a notarial statement of the manager, with an exhibit of the list of the subscribers, the position of the payments, and a duplicate of the deed of partnership, if executed *sous seings privés*, or of a copy if the deed is notarial or received by a notary other than the one who received the declaration (statement).
4. If the deed of partnership (Articles of Association) has not been made in duplicate and deposited at the head office of the *Société*.
5. If there is a clause in the deed allowing dealings with the shares before one-fourth has been paid up.
6. If the regulations as to the conversion of the nominative shares into shares to bearer have been broken.
7. If the *apports* and privileges granted have not been submitted to examination and approval in due course.
8. If the second meeting which approved the *apport*, &c., was called without a printed report being furnished to the members five days before the meeting.
9. If no committee of control has been appointed. This provision specially refers to *Sociétés anonymes*.

10. If the directors are not appointed for a limited time.
11. If less than seven members formed the Company.
12. If the statement of the promoters and the documents supporting it have not been submitted to the general meeting.
13. If the necessary formalities, &c., have not been observed in the appointment of the first directors, &c., or if the Company is established before they have accepted office.

The consequences of the declaration of the nullity of a Company fall upon those persons who are responsible for it, and they will have to make good any loss occasioned by their conduct jointly and severally. Results of this declaration.

An agent to represent shareholders in any actions may be appointed by persons representing one-twentieth of the capital of the Company. Agent to represent shareholders.

Penalties are attached to the violation of essential regulations, as in the case of *Sociétés en commandite par actions*. Penalties are also inflicted for illegal issue or dealing in shares; fraudulent contrivances by which a fictitious majority is obtained at general meetings; making up of sham subscriptions or payments, and wilful publication of fictitious subscriptions or payments, or other false statements made for the purpose of obtaining subscriptions; false statements published as to persons who are to be connected with the Company; distribution of fictitious dividends by the shareholders. Penalties.

The action for recovery of dividends against the shareholders, when the Company becomes insolvent, is governed by the same principles as in the case of *Sociétés en commandite par actions*.

Sociétés à Capital variable.

This special form of *Société* may be defined as one the Articles of which provide that the capital may be further increased by additional payments by the members, or by the issue of fresh shares to new members.

Complete freedom in the matter of increasing the capital is allowed to such *Sociétés*.

The members must be left free to withdraw from the Company, and to take either all or a part of their contributions.

This *Société* is bound to adopt the form of one of the other kinds of *Société*, being, in addition, subject to special rules as follows:— Special rules in the *Société à capital variable*.

The capital must not be raised above 200,000 fs. at

starting; but each year an addition of the same amount may be made.

The shares must be nominative, not to bearer.

The shares may be of the value of 50 fs.

The transfer or negotiability of shares is regulated by the constitution of the *Société*, in accordance with the regulations of Art. 50 of the Law of 1867.

One-tenth only of the shares need be paid up in these *Sociétés à capital variable*.

The total capital must not fall below one-tenth of that with which it started.

Each member may retire when he thinks fit.

This is usually qualified to some extent by the rules of the *Société*.

Members may be expelled by a general meeting.

Members when they retire or are expelled, retain for five years their liability on contracts, &c., entered into while they were members.

These *Sociétés*, which are usually formed by artisans in want of an investment for their money in times of crisis, are mostly civil, not commercial *Sociétés*.

EVIDENCE.

Evidence must be in writing.

Oral evidence of the existence and formation, &c., of *Sociétés*, is not allowed. All proofs, to be valid, must be in writing. Deeds *sous seings privés*, or else notarial deeds, are necessary for all alike.

Rules in the case of deeds *sous seings privés*.

If the deed of partnership is *sous seings privés*, the rule is—

1. In the case of *Sociétés en nom collectif*, the deed of partnership must be executed in as many originals as there are beneficially-interested parties.
2. It is the better opinion that the same necessity exists in the case of *Sociétés en commandite simple*.
3. In the case of *Sociétés en commandite par actions*, and of *Sociétés anonymes*, the law expressly enacts that two duplicates, one annexed to the notarial declaration of the subscription of the capital, and the other deposited at the head office of the association, are sufficient for all purposes.

Supplementary evidence inadmissible.

In all cases the deed or Articles of Association speak for themselves, and their evidence cannot be supplemented or varied by oral evidence.

PUBLICATION OF NOTICES.

Before the expiration of the month in which any commercial association is formed, a duplicate of the deed constituting it, if Deposit of deeds or Articles of Association. *sous seings privés*, or a copy, if notarial, is deposited at the office of the justice of the peace and Tribunal of Commerce for the district within which the association is established.

If the *Société* has several houses of business in different districts, the deposit must be made at the corresponding offices in each.

In the case of a *Société en commandite par actions*, there must be annexed to the deed—Exhibits.

1. A copy of the notarial deed, certifying the subscription and payment of one-fourth of the shares (one-tenth, à *capital variable*).
2. A certified copy of the resolution of the general meeting relative to the unification and approval of the *apports* and privileges granted.

In the case of a *Société anonyme*, besides the above documents, there must be deposited—

3. A certified copy of the resolution of the first general meeting called to verify the accuracy of the directors' declaration, which states the subscription of the whole of the capital and the payments made.
4. A full list of the subscribers, with their christian and surnames, their residence, occupation, and the number of shares held by each.

Further, before the expiration of the same period, an abstract of the deed constituting the *Société*, and of the documents to be annexed thereto, must be advertised in one of the newspapers appointed to receive such advertisements. Advertisements.

This insertion in the newspapers should be proved by a copy of the same, certified by the printer, legalised by the mayor, and registered within three months from its publication, How proved.

The same deposit and publication are required—

1. On any change in the Articles of Association ;
2. If the *Société* is continued beyond the period fixed for its duration ; Other cases where same formalities are required.
3. If dissolved before that period, stating also how it is to be wound up ;
4. On any change or withdrawal of the members ;
5. On any change in the name of the firm ;

6. Any change of *Sociétés en commandite par actions*, existing before the Law of 1867, into *Sociétés anonymes*; change of *Sociétés anonymes* existing at the date of that law into *Sociétés* regulated according to its provisions; change of limited liability Companies into *Sociétés anonymes*;
7. If a resolution for winding up, after loss of three-fourths of the capital, is passed by a general meeting of a *Société anonyme*;
8. The increase of capital in a *Société à capital variable*.

WINDING-UP OF SOCIÉTÉS.

Dissolution of a *Société* by operation of law.

A partnership or Company may be dissolved or put an end to either by operation of law or by way of action.

Under the former division are arranged—

The expiration of the time for which the contract was made. When this period is reached, the *Société* is, *ipso facto*, at an end, whether its object has or has not been attained.

Similarly, when the business for which the contract was made has been completed.

Extinction of the subject-matter of the *Société*.

This may be either—

1. By loss of that for which the *Société* was formed.
2. By exhaustion of the whole capital.
3. By loss of that which one of the members contributed as his *apport*.

The death of one of the partners.

This does not apply to *Sociétés* in which the capital, not the persons, forms the essence of the contract, *e.g.*, the *Société anonyme*.

Death of active partners.

In the case of a *Société en commandite*, the same principle is applied. If the manager (the active partner) dies, the *Société* is at an end; if a *commanditaire* dies, the dissolution depends upon the question whether the formation of the *Société* considered the individual members as essential to its existence, or whether the capital, being in shares, is transferable.

A sentence of law taking away from one of the partners the right or power to act in the partnership.

Bankruptcy of the firm.

Express wish of some or one of the members to put an end to the *Société*.

This applies to *Sociétés* the duration of which is not limited to any period.

With regard to the second division, when certain acts or By action, the position of the *Société* give to its members the right to apply to a Court for its dissolution, the chief headings are—

1. The non-performance of contracts with the *Société* which were included in the Articles which established it.
2. Acts subsequent to the establishment of the *Société* Grounds for the application, which, according to Art. 1,871 of the Code Civil, furnish “good grounds” for the dissolution.

Such grounds may be any event which prevents the *Société* from being carried on beneficially, *e.g.*, a serious disagreement between the partners, or a chronic disease incapacitating one of them from performing his duties, or a depreciation of the capital so serious as to prevent further operations.

The object of winding up a *Société* is to obtain an exact Object of winding up. account of the assets and liabilities, and to conclude the undertaking by realising the former and settling the latter, after which any surplus that remains is divided amongst the beneficial owners.

One or more persons are appointed liquidators for this Liquidators purpose.

If the liquidators are named in the Articles of Partnership or Association, they are thus appointed by agreement among all the members.

If after the dissolution of the *Société*, the agreement of the members cannot be obtained, an application should be made Application to the Court in the event of disagreement to the Court for this purpose.

The liquidators' duties are to do all that is beneficial for the interests of the concern, to stop the running of the Statutes of Limitation, deal with mortgages made, &c. They should keep a strict account of their operations, and present it to all interested parties; sell goods, pay debts due by the *Société*, get in debts owing, and institute such legal processes as are requisite for this purpose. Duties of the liquidators;

Whether they can compromise and arrange claims is a disputed point.

A special authority is required to enable them to sell real their powers. property.

They have no power to borrow money or effect mortgages.

When their other duties are ended, they divide the surplus funds according to the rights of the members.

LIMITATION OF ACTIONS AGAINST MEMBERS OF SOCIÉTÉS.

Limitation of
actions.

During the continuance of the *Société*, the right of action against the individual members is only barred by the lapse of time, which runs in favour of ordinary debtors.

Claims barred
after five years
in certain cases.

After the dissolution, all actions in reference to the *Société* against members (who were not the liquidators), their widows, or heirs, must be brought within five years subsequent to the dissolution of the *Société*, if the deed of the *Société* which states its duration, or the deed of dissolution, has been published in accordance with the terms of the law. After five years, all actions in reference to the *Société* against the above-named persons are barred.

With regard to the words of the law, *associés non-liquidateurs*, it appears to be the better opinion that the persons who act as liquidators are, as regards creditors of the *Société*, equally favoured by the law, and that actions against them by persons claiming against the *Société* are barred after five years; but that, as between them and the members whose agents they are for the purposes of winding up, that they are only freed from actions after the full period of limitations has expired.

APPENDIX TO PARTNERSHIP.

Formalities to be complied with in constituting ordinary Partnerships and Limited Companies.

Formalities for constitution of partnerships and Companies.

I.

- { *Sociétés en nom collectif.*
- { *Sociétés en commandite simple.*

The deed of partnership may be drawn up either in the form of a document, *sous seings privés*, i.e., privately signed by the parties, or by notarial deed.

Form of deed.

The deed is essential, and must be executed in as many originals as there are parties. There is here a distinct difference from English law, which recognises a partnership merely agreed to orally by the parties.

Number of originals.

When the parties have signed the deed, it must be registered at the Registration Office, and the duty of 1-10th per cent. upon the capital subscribed must be paid. After registration, and within one month from the date of the execution of the deed, its contents must be published and advertised in the prescribed form. In default of this regulation being observed, the deed becomes null and void.

Registration—duty.

The advertisement in a local newspaper must contain:—

Advertisement.

1. The names of the active partners who are not *commanditaires*.

2. The style and office of the firm or Company; the names of the partners authorised to manage, transact business, or sign on behalf of the Company.

3. The amount of the capital, and the amount furnished by the *commanditaires*.

4. The date at which a copy of the deed of partnership was deposited at the office of the justice of the peace, and at

the office of the Tribunal of Commerce, as required after registration.

5. The form of the *Société*, whether *en nom collectif*, *en commandite simple*, &c.

After these formalities have been fulfilled, the deed of partnership is complete, and all the rights and liabilities of the partners or members begin to take effect.

II.

Of Companies divided into shares; and firstly, of the formalities common to all.

Draft of Articles of Association.

Any person desirous of forming a *Société par actions* must previously draw up Articles of Association, which will be binding on all parties who subscribe for the shares.

Necessary formalities.

The Articles of the law prescribing the subscription of the capital, the payment of one-fourth of the capital, the manner in which the subscription and payment are authenticated, and the formalities to be observed as regards the verification of agreements entered into with the founders and others, must be strictly observed in all cases. With regard to the latter, all agreements entered into with the promoters, vendors or founders relating to the purchase of good-will, plant, stock, &c., or remuneration for services rendered in the formation of the Company, must be confirmed and approved at two distinct meetings of the shareholders, and no Company is legally and definitely constituted until such confirmation takes place. If it is refused or withheld, the undertaking is thereby null and void.

Publication of agreements.

Special formalities necessary in the case of Sociétés en commandite par actions.

Special requisites for a *Société en commandite par actions*.

A committee of inspection, to act for not longer than one year, must be appointed at the general meeting of shareholders immediately after the definite formation of the *Société* and before the commencement of its business. At least three shareholders must form this committee. The conditions of its appointment are comprised in the Articles of Association. Its first duty is to see that the provisions of the law have thus far been complied with. This committee is responsible both to the shareholders and to third parties, if it turn out that the provisions of the law have not been observed.

Special formalities relating to Sociétés anonymes.

A *Société anonyme* is conducted by a manager appointed, subject to revocation and with or without salary, from among the members of the *Société*. For Sociétés anonymes.

The number of members to constitute a *Société anonyme* must be not less than seven.

The depositions and declarations required must be made by the promoters.

The general meeting appoints the directors of the Company (who may act as such for six years) and the auditors for the first year.

The directors are bound to hold a certain number of shares in the Company, which are inalienable.

When the directors and auditors have been thus appointed, the *Société anonyme* is definitely constituted and may legally commence operations.

For other regulations, the Law of July, 1867, may be consulted.

Lastly, in the interest of the public and of those who may have dealings with firms or Companies, and in order that information as to the rights and powers of the members or managers may be readily ascertained, it is enacted that the partnership deed or Articles of Association must be filed at the office of the justice of the peace and of the Tribunal of Commerce, together with other documents relating to the constitution and formation of the Company. We have already noticed the provision for publication in the newspapers of various items of information with reference to this point. Unless these formalities are strictly observed, the proposed partnership or Company becomes null and void. Filing of the Articles of Association.

Chief points of contrast between English and French Law, in respect of Partnerships and Companies.

1. In France, partnership must be by deed.
In England, a parol agreement will suffice.
2. In France, dormant partners are only liable to the extent of their investment.
In England, all partners, active or dormant, are equally responsible, with the exceptions provided for by 28 and 29 Vic., cap. 86.
3. In France, liability is evidenced by the deed of partnership.
In England, no arrangement between partners is valid against third parties, though valid as between the parties who made it.

English and French law contrasted.

4. Companies of partly limited and partly unlimited liability do not exist in England.
5. Unlimited liability Companies are recognised by English law.
6. In France, the value of shares to be issued is regulated by law.
In England, the value of each share depends upon the will of the promoters, £1 (25 fs.) shares being often issued.

English and Foreign Companies in France.

Foreign Companies,

English Companies legally constituted are entitled to carry on business, and to exercise all their rights in France, and especially to bring and defend actions in the French Courts.

No restrictions on value of shares.

English Companies can be brought out in France, and issue shares without being compellable to conform to the provisions of the law which governs French Companies. We have already pointed out that the latter cannot issue shares of less than 100 fs., when the capital of the Company is less than 200,000 fs. (£8,000), or shares of less than 500 fs., when such capital is more than 200,000 fs.; and that French Companies cannot commence operations until the capital is entirely subscribed, and one-fourth paid up on all the shares. These regulations, as well as all those relating to the constitution of French Companies, are in no way applicable to English Companies, which latter may therefore issue in France shares of any value which may seem to them expedient. They are liable to no other obligation than that of faithfully observing the provisions of English law. Nevertheless, an exception has been made in regard to shares issued by railway Companies whose lines are constructed abroad, as to the value of their shares and the amount to be paid up thereon.

Surety by way of guarantee required.

English Companies must nevertheless comply with an obligation to which French Companies are not liable. Before making the issue of their shares, either by means of placards or hand-bills, or through the medium of the public press, they must obtain the approval by the administration of the Stamp Office of a solvent surety, who guarantees the payment by the Company of the annual duty payable by *Sociétés par actions* to the French Government.

Powers of English Limited Companies to carry on business, to issue capital, and to sue in France.

English Limited Companies can trade and sue in France as freely as French Companies, subject to the two following conditions:—1. They must be constituted in conformity with English law. 2. They must conform to French law.

These provisions appear in the Treaty entered into between England and France, on 30th April, 1862, Art. 1 of which is as follows:—

Treaty provisions between England and France.

“The high contracting Powers mutually declare that they grant to all Companies and other mercantile, industrial or financial associations, *constituted* and *authorised* pursuant to the particular laws of either of the two countries, the permission to exercise all their rights, and to sue in the Courts, either as plaintiffs or defendants, throughout the States and possessions of the other Power, without any further condition than that of conforming to the laws of the said States and possessions.”

The terms of this Treaty are wider than those of the Law of the 30th May, 1857, which only granted the right of trading and suing in France to “limited Companies and other commercial or industrial associations which were *subject to the authorisation* of foreign Governments,” for the later Treaty, while applying to Companies subject to the above authorisation, also comprises limited Companies freed therefrom in addition to those incorporated by Act of Parliament or Royal charter.

Extension of previously existing rights.

English Companies wishing to raise capital in France are not bound by Arts. 13 and 14 of the Law of the 24th July 1867, relating to the entire subscription of the capital, the payment up of one-fourth, the value of the shares and the provisions relating to the negotiability of the shares after payment of one-fourth, and the shares remaining as *nominative* until payment of one-half.

It has been decided that the obligations contained in the Treaty of 1862, to conform to the laws of France, relates simply to “the general laws of police and security, and to the laws governing real property, and to the forms of procedure but not the particular laws which, in each country, regulate the actual constitution of industrial and mercantile associations, the object of the Treaty being on the contrary to carry into effect the said laws abroad.” (Court of Appeal, Paris, 22nd February, 1866.)

Meaning of the phrase “conform to laws of France.”

Foreign shares
on the *Bourse*.

The *Chambre Syndicate* of Paris stockbrokers admits upon the Bourse the negotiation of shares in foreign Companies, although of a lesser value than shares in French Companies, provided that such foreign Companies have been duly constituted according to the laws of their respective countries.

Limited Companies' advertisements.

Penalties for
fraud.

Art. 15 of the Law of 24th July, 1867, upon French Companies, which renders penal the publication of mendacious statements in order to obtain subscriptions for shares, is applicable to advertisements and publications relating to foreign Companies as well as to French Companies.

The Court of Appeal in Paris had decided in the contrary sense in the Trouville Association case, on the 13th June, 1872. The Court of Cassation has since, however, made the above salutary change in the law. (Cassation, 8th August, 1873).

FORMS.

PARTNERSHIPS.

DEED OF PARTNERSHIP EN NOM COLLECTIF.

BETWEEN

Parties

Monsieur Louis Dupré, silk merchant, of _____,
of the one part, and Monsieur Pierre Lagrange, also
silk merchant, of _____, of the other part.

It has been agreed as follows :—

Formation of
the partnership.

Art. 1. By these presents, a partnership *en nom collectif* is arranged between the undersigned for the purpose of manufacturing and selling silk goods.

Name.

Art. 2. This partnership shall be under the style and name of L. Dupré and P. Lagrange.

Office.

Art. 3. The chief office of this partnership is fixed at Lyons, Rue Imperiale, No. 92.

Duration.

Art. 4. The partnership contract shall last for 10 years from the present date.

Signature.

Art. 5. Each partner may sign in the firm's name. They may use it together or separately, but only for the partnership business.

Apport.

Art. 6. Each of the undersigned undertakes to put into the partnership the sum of 30,000 francs, so as to form a partnership capital of 60,000 francs.

Stock-taking.

Art. 7. The assets and liabilities of the firm shall be balanced on the 31st December in each year.

The profits resulting shall be divided in equal shares between the two partners. The losses, if any, shall be shared in the same proportion. Profit and loss.

Art. 8. Each partner shall have the right to draw 800 francs per month for his personal expenses on account of his share in the profits. Ordinary expenses.

Art. 9. If either partner has to travel for the purposes of the partnership, he shall have an allowance of 10 francs per day for his ordinary expenses. His extraordinary expenses shall be repaid to him in full. Extraordinary expenses.

Art. 10. Each partner shall give all his time and attention to the business of the partnership, and engages not to interest himself in any undertaking similar to that which is the object of these presents. Undertaking of partners.

Art. 11. If more than half of the partnership capital is lost, the partnership shall be absolutely dissolved on the demand of either partner. Loss of half the capital.

Art. 12. The partnership shall be absolutely dissolved by the death of either partner. Death.

An account shall immediately be taken, on the death of either partner, of the assets and liabilities of the partnership, based on the last balance struck. Accounts.

The value of the business connection and the right to the lease, which is to belong by special agreement to the survivor, shall not be reckoned in this account. Rights of survivor.

The surviving partner shall also be entitled to retain goods and book-debts at the value at which they stand in the inventory taken, provided he give notice of his intention within a fortnight after the taking of the said inventory.

If the surviving partner exercises this right, the heirs of the deceased partner shall not claim repayment from him of the capital except in three yearly instalments, the capital due to them bearing interest at 5 per cent. Rights of heirs.

The surviving partner shall not be bound to give security for the payment of the amount in which he would in such case be indebted.

If the surviving partner should decline to retain the goods and book-debts, &c., the goods shall be sold and the debts collected by a liquidator named jointly by the surviving partner and the heirs of the deceased partner; or in the event of their disagreeing, by the President of the Tribunal of Commerce, when requested by either party.

Winding-up
and dissolution.

Art. 13. At the expiration of the partnership at the end of the time fixed for its duration, or in case of dissolution otherwise than by the death of one of the partners, the winding-up shall be carried out by the two undersigned parties. If one refuses to carry it out, the other may do so alone; if neither is willing to conduct it, then it shall be managed by a third person chosen by the parties; and in case of disagreement between them, by a person chosen by the President of the Tribunal of Commerce, in accordance with a request to that effect made to him by either party.

Art. 14. The bearer of either one of the originals of these presents shall have full power to publish them wherever necessary.

Signed.

Drawn in duplicate at Lyons, the 28th day of December, 1881.

FORM OF PARTNERSHIP EN COMMANDITE SIMPLE.

Parties.

BETWEEN the undersigned

M. Budin, Sculptor, of No. 30, Rue des Saints-Pères,
Paris, of the one part;

Pierre Labry, of ; Antoine Menlieu, of
Philibert Drin, of ; and Denis Vallot, of , of
the other part.

Formation of
partnership.

Art. 1. A partnership is by these presents arranged between M. Budin as manager and sole responsible partner, and MM. Labry, Menlieu, Drin, and Vallot as sole *commanditaires*. The *commanditaires* shall only be liable up to the extent of the amount which they invest, and shall in no case be liable to any call above their contribution.

Purposes.

Art. 2. The object of this partnership is the reproduction of famous statues, and the sale of these reproductions, M. Budin to have the work done by the most competent persons.

Office.

Art. 3. The offices of the firm are fixed at Paris, Rue Montmartre, No. 15.

Duration.

Art. 4. The partnership is to last for 15 years from this day.

Signature of
firm.

Art. 5. The name and signature of the firm shall be Budin & Co. M. Budin alone has the right to use this signature, and only for the purposes of the partnership.

Apports.

Art. 6. MM. Labry, Menlieu, Drin, and Vallot undertake to furnish to the partnership, by way of *commandite*, to be

acknowledged by M. Budin, manager, each paying 1-20th per month, from the present date, the following sums,—

| | | |
|----------------------|--------|-----|
| M. Labry | 20,000 | fs. |
| M. Menlieu | 10,000 | „ |
| M. Drin | 5,000 | „ |
| M. Vallot | 5,000 | „ |
| <hr/> | | |
| Total | 40,000 | fs. |

Art. 7. Each *commanditaire* shall have the right to transfer his interest in the partnership either to the other partners or to other persons. Each transfer or assignment so made shall be for a sum of not less than 5,000 fs., so that, under no circumstances, shall there be more than eight *commanditaires*. The transfers, to be valid, shall be executed in duplicate, signed by the transferor and transferee, and notice thereof given to, or the transfer accepted by the manager.

Rights of partners to transfer their interest.

Art. 8. If, under any circumstances, a share of 5,000 fs. becomes the property of more than one person, they shall be bound to appoint one of themselves only to represent them all so long as the partnership exists.

If one or more of the *commanditaires* should die, the partnership shall not be thereby dissolved, but shall be continued with his heirs.

Death of a *commanditaire*.

The heirs or creditors of the *commanditaires* shall under no circumstances have any right to have the property of or securities held by the partnership (*apposition des scellés, e.g.*) sealed, nor to deal with the management of the business. They may have recourse to the partnership accounts only for the purpose of exercising their rights.

Rights of heirs.

Art. 9. The books, &c., of the partnership, shall be kept according to the regulations of the Code of Commerce.

Books, &c.

The *commanditaires* shall at all times have the right to examine all books and papers of the partnership and to verify the cash and other accounts.

Art. 10. The manager shall receive an annual salary of 3,000 fs., payable by equal monthly instalments.

Salary of manager.

He shall further be entitled to a share in the profits, as fixed in Art. 12 of these presents.

Art. 11. A balance-sheet of the assets and liabilities of the partnership shall be drawn up every year on the 31st of Dec.

Balance-sheet.

In this balance-sheet, all goods and materials delivered shall be entered at their net cost. Good debts shall be entered at their proper value, bad debts only by way of taking an account of them.

How drawn.

The expenses of rent, licence, lighting, salary of the manager and employés, as well as all general expenses, shall be deducted from the receipts.

The profits shall consist of the surplus of the assets above the liabilities.

Copy sent to
commanditaires.

A copy of the balance-sheet shall be sent by the manager to each of the *commanditaires*, and they shall acknowledge the receipt of it within a fortnight from the date on which it is drawn up. They shall send to the manager any criticisms which they wish to make within the following fortnight, in default of which it shall be treated as valid and approved.

Profits; prefer-
ence dividend.

Art. 12. The first charge upon the profits, as shown by the annual balance-sheet, shall consist of a sum sufficient to pay five per cent. on the amount of the moneys contributed by the *commanditaires*, by way of preference dividend.

The surplus shall be divided as follows :—

Division of
surplus profits.

Sixty per cent. to the *commanditaires*, by way of second dividend, in proportion to their general contributions ; 40 per cent. to the manager.

The dividends shall be payable at the partnership offices within the month in which the balance-sheet is finally settled.

Loss of one-
third of the
capital.

Art. 13. If one-third of the partnership capital should be lost, the manager shall call a meeting of the members, and they shall decide whether the partnership ought to be dissolved. No decision on this point shall be valid unless passed by a majority of the members representing four-fifths of the partnership property.

Dissolution—
Winding-up.

Art. 14. Whenever the partnership is dissolved, the winding-up shall be conducted by the manager, with the co-operation of one of the *commanditaires* named by the majority of them.

Disputes.

Art. 15. All disputes that may arise, either during the existence of the business or in the winding-up, shall be decided at Paris in accordance with the law.

Domicil.

For this purpose, each partner shall make choice of domicile at Paris ; and in default of his so doing, this choice of domicile shall be made at the office of the *procureur* of the Republic.

Power to publish the Articles.

Each person who holds one of these originals shall have the right to publish these presents, in accordance with the law.

Signed.

Drawn in duplicate originals, at Paris, the 28th day of December, 1881.

Before the undersigned, M. Faure and his partner, notaries at Bordeaux, appeared M. Jean **Bournet**, merchant, residing at _____ and M. Jacques **Raymond**, merchant, residing at _____ who have settled the following Articles of Association of the Company which they are forming for the object hereinafter specified.

Formation and Object of the Société, &c.

Art. 2.—The business of the *Société* is :

1. To purchase and resell, in such manner as the law permits, and to take up all public stocks and all shares or debentures in the various commercial undertakings now or hereafter to be established, both in France and in foreign countries.
2. To make advances on public stock, shares and debentures, and also on goods, warrants, and bills of lading.
3. To treat, by way of tender or otherwise, either alone or in association with other persons, for all State loans, or loans of towns or communes in France or abroad, and to realise the same.
4. To open credits on the deposit of such securities or on mortgages.
5. To undertake the receipt of subscriptions, manage all receipts and payments for financial Companies.
6. To open accounts for specie and shares and to discount commercial bills.
7. To conduct generally all ordinary business of banks. discount and commission agents.

No maritime undertakings and advances on securities, the title to which is disputed, are allowed to the *Société*.

Art. 3. — The style and signature of the Company is Bournet, Raymond et Cie.

The name of the Company is also Banque Bordelaise.

MM. Bournet and Raymond, sole managers for the Company, have alone the right to use the Company's signature, and only for the business and purposes of the Company.

Art. 4.—This *Société* shall begin from the day when it is definitely established, as hereinafter specified, and shall last until December 31st, 1890, subject to the conditions hereinafter expressed as to a prior dissolution or a prolongation of the *Société*.

Art. 5. — The chief office and domicil of the Company are at Bordeaux, Place de la Bourse, No. 4.

PARAGRAPH II.

Capital.

Art. 6.—The Company's capital is fixed at 4,000,000 fs., divided into 8,000 shares, of 500 fs. each; of these shares M. Bournet has subscribed 400, M. Raymond 400—total, 800. The 7,200 shares remaining are still to be subscribed for, and the present Company will not be definitely constituted until they are subscribed in full and all other conditions required by law to be observed have been fulfilled. If the 7,200 shares are not subscribed within three months from the present date, these presents shall be treated as null and void.

Art. 7.—The shares shall be paid up as follows: one-fourth on application, the three-fourths remaining by three equal monthly instalments, dating from the establishment of the present Company.

Art. 8. — The share certificates are to be taken from a register with a counterfoil; they are to be numbered in series, signed by one of the acting managers for the Company, examined by a member of the Committee of Inspection, and stamped with the Company's stamp.

Art. 9. — When the first payment is made by the subscribers, they shall receive provisional fully paid-up nominative certificates of 125 fs., with the calls to be made in the future stated upon them.

After the shares have been fully paid up, there shall be a final issue of nominative shares, or shares to bearer, according to the choice of the shareholder, to be given in exchange for the provisional certificates.

Shares to bearer may be transferred by the simple delivery of the certificate: nominative shares, according to Art. 36 of the Code of Commerce.

Art. 10.—If the calls are not paid at the time fixed, the shareholder will be liable to interest at five per cent. per annum for each day that he makes default.

The person making default shall be required to complete his payments by an advertisement inserted in the newspapers of Bordeaux used for the purpose of legal notices. This advertisement shall state the numbers of the shares in default.

If the owner does not discharge the claim within one month, and without any need to have recourse to a Court of justice, the shares so in default may be sold publicly in duplicate, by means of a stockbroker on the Bourse, or by means of a notary, at the risk and peril of the person making default, without prejudice to the right reserved by the Company to sue the shareholder in person in the ordinary manner.

The original certificates of shares thus sold are absolutely null and void; and therefore, any share which does not bear on the face of it a regular statement of the payments which ought to have been made will be non-negotiable and non-transferable.

The numbers of the shares thus annulled are published in the newspapers above mentioned.

Art. 11.—The rights and obligations that belong to the share become those of the holder. The possession of shares implies acceptance of the Articles of Association and of the resolutions of the general meeting.

Art. 12.—Shares, or coupons of shares, when half their value is paid up, may be converted into shares to bearer by a resolution passed at a general meeting.

Whether the shares remain nominative after this meeting, or are converted into shares to bearer, original subscribers who have assigned their shares, and the persons to whom they have assigned before one-half is paid up, shall remain liable to pay the full value of their shares at any time within two years subsequent to the resolution of the general meeting.

Art. 13.—With regard to the Company no shares can be divided, and no fraction of a share will be recognised. If a share is held in fractions by joint-owners, they shall be bound to be represented in the Company by one single person.

Heirs and creditors of shareholders shall have no right to

interfere with the business of the Company, or to have, *e.g.*, the seals affixed on the property of the Company. Their rights will be contained in the books of the Company, and in the resolutions of the General Meeting.

PARAGRAPH III.

Management and Committee of Inspection.

Management.

The managers are invested with all the powers necessary for their position, in order to carry out all business of the Company. They are entitled (Art. 3) to the use of the signature of the Company, but if they have to appoint general agents, the appointment, to be valid, must be signed by both.

Art. 15.—The business of the Company shall be recorded in registers kept according to law.

Art. 16. — Each of the managers, during his tenure of office, and as guarantee for his management, shall be owner of 400 shares, which shall remain in the Company and shall not be handed over to him until his accounts have been passed.

Art. 17. — An annual allowance of 16,000 fs. shall be made to each of the managers, as remuneration for the part they take in the management, payable in twelve equal monthly instalments.

Art. 18. — The Company shall not be dissolved by the death or retirement of either of the managers. MM. Bournet and Raymond covenant with each other that neither shall have power to resign his post before six years from the date of the definite constitution of the Company.

In the event of the decease or retirement of one of the managers, the survivor shall have the exclusive management and conduct of the business. He shall have power to select a joint manager, who, however, shall not enter upon his duties until approved by a general meeting.

In the event of the retirement or decease of either of the managers, the manager who has resigned, or the heirs of the deceased manager, shall take the position of ordinary *commanditaires*.

Art. 19.—A committee of inspection of five shareholders is to be appointed.

The members of this committee shall be named by the general meeting, directly after the establishment of the Company and before any business has been transacted.

The first committee shall only be appointed for one year. Subsequently, the committee shall be chosen every five years.

Each member of the committee shall deposit with the Company 40 shares, which shall be inalienable during his tenure of office.

The committee shall choose one of themselves as chairman ; his tenure of office shall last for one year, and he may be re-elected.

In the chairman's absence, the chair shall be taken by the oldest member present.

If any member of the committee shall die or resign, his place shall be filled up by the next general meeting. The new member thus elected shall take the position of his predecessor.

Art. 20.—The committee shall meet as often as it thinks fit, according to the regulations which it may make, but its meetings shall be held at least once a month. It may be summoned either by the chairman, or by one of the managers, or by any two committee members. The meetings shall be held at the head office of the Company. Three members shall form a quorum, and the majority shall decide all questions. If the votes are equal, the chairman shall have a casting vote.

The resolutions passed shall be entered in a book kept for that purpose, and shall be signed by all members present.

Art. 21. — The first duty of the committee, after its appointment, shall be to examine whether all the conditions required for the definite establishment of the Company have been observed.

Art. 22.—The Committee shall also examine the books, accounts, ledgers, &c., of the Company.

They shall also make an annual report to the general meeting, in which they shall point out any irregularities or inaccuracies in the books, &c., and state, if necessary, any objections to the dividend proposed by the managers.

They may also call a general meeting, and according to its decision ask for a dissolution of the Company.

Art. 23. — The members of the committee incur no liability by reason of the acts done by the managers and their results. Each member is only liable for his own mistakes or conduct.

Art. 24.—The members of the committee of inspection shall receive *jétons de présence*, the value of which shall be fixed by the General Meeting.

PARAGRAPH IV.**Of the General Meeting.**

General
meeting.

Art. 25. — The general meeting consists of all shareholders, owners or holders of 10 shares at least.

Ten shares count as one vote, and each shareholder has one vote for every 10 shares that he holds. One shareholder can only have 10 votes at most, whatever number of shares he may hold.

The holders of shares to bearer, in order to take part at the general meeting, must leave their certificates of shares at the office of the Company a fortnight before the date of the general meeting.

Each holder of shares to bearer receives a card of admission. This card bears his name, and is not transferable. It states the number of shares deposited at the office.

Art. 26.—The general meeting, properly convened, represents the whole of the shareholders. Its resolutions are binding on all, whether present or not.

Art. 27.—The general meeting is held in March of every year at Bordeaux.

An extraordinary general meeting may be called whenever the managers or the committee of inspection think it desirable. Under all circumstances it must be convened by a notice, published at least one month prior to the meeting, in the journals of legal advertisements in Paris and Bordeaux. If the general meeting is called to consider the questions mentioned hereafter in Art. 33, the notice convening it shall state this fact.

Art. 28.—Every shareholder entitled to vote at the general meeting may be represented by an agent, provided always that his agent is a shareholder and a member of the general meeting.

The form of authorisation shall be decided by the managers. The authorisation must be left at the Company's office a fortnight before the meeting.

Art. 29.—The chairman of the committee of inspection presides at the general meeting, and in his absence the member chosen by the committee.

The two largest shareholders present perform the duties of scrutineers.

The president chooses the secretary.

Art. 30.—Resolutions passed by the meeting are valid if one-fourth of the Company's capital is represented. If at the first meeting one-fourth of the capital is not represented, a second meeting is called at an interval of one month from the first. Any resolutions passed at the second meeting with reference to the questions discussed at the first are valid, whatever be the number of members present or the amount of capital represented.

Art. 31.—Resolutions are passed by the majority of votes of the members present or represented.

For any of the purposes mentioned in Art. 33, two-fifths of the capital must be represented at the meeting, and two-thirds in number of the members present must vote in the majority; otherwise the resolutions cannot be passed.

Art. 32.—Voting by ballot shall be allowed if demanded by five members at least.

Art. 33. — The general meeting called according to Arts. 25 and 29, by the managers or the committee of inspection, shall discuss proposals for combinations, amalgamation, &c., with other Companies or with individuals; the increase of the Company's capital; the continuance or dissolution of the Company; any modification of or additions to the rules.

The general meeting grants the necessary powers to carry the above-mentioned resolutions into effect.

Art. 34.—The general meeting receives the report of the managers, and discusses, objects to, or approves their accounts. The managers are bound to transmit all these to the committee of inspection, one month at least before the meeting.

It also receives the committee's report.

A fortnight at least before the general meeting each shareholder can obtain, at the head office, information as to the balance-sheet, stock accounts, and report of the committee.

The general meeting appoints the members of the committee of inspection, to replace those whose term of office has expired, or who have died or resigned, or retired for any reason. It decides, within the limits of the rules, on all the interests of the Company.

Art. 35. — The resolutions of the general meeting are drawn up in the form of a report, signed by the members of the *bureau*; the abstract of these reports, to be used where necessary, are certified by the president of the committee of

inspection, or by the member of the committee who takes his place.

An attendance sheet, to state the number of members attending each meeting and the number of shares represented by each, is annexed to the minute of the report, with any powers of attorney authorising agents to act for members. This sheet is signed by each shareholder on entering the meeting.

PARAGRAPH V.

Accounts and
division of
profits.

Art. 36.—The first financial year for the purposes of the Company shall include the time that elapses from the date of its definite formation until the 31st of December, 1883.

In the succeeding years an annual account shall be taken of the assets and liabilities of the Company. The profits shall consist of the excess of the assets above the liabilities, after deducting all general expenses and the salary of the managers.

A first charge of five per cent., by way of first dividend, shall be taken on these profits, to stand in place of interest.

A fifth of the profits shall be set aside as a reserve fund, in order to meet any extraordinary or unforeseen charges upon the Company.

The surplus shall be divided in the following proportions :

80 per cent. on all the shares proportionately, by way of second dividend ;

20 per cent to the managers, in equal moieties.

Art. 37.—When the reserve fund reaches 33 per cent. of the Company's capital, the fifth part of the profits shall cease to be added to, it but it shall be again added if the reserve fund is diminished below 33 per cent. of the capital.

Art. 38.—The dividends shall be payable in the month following the general meeting which settles them.

PARAGRAPH VI.

Alteration of the Rules—Dissolution—Winding-up.

Alteration of
rules.

Art. 39.—If it become necessary to modify or add to the present rules, the general meeting shall have power to do so in the manner pointed out by Arts. 26, 31 and 33.

Art. 40.—If more than one-half of the Company's capital is lost, the managers shall call a general meeting to decide whether the Company shall be dissolved, or carried on any longer.

If the meeting vote for carrying on the Company, it shall

be *ipso facto* dissolved as soon as the loss is equivalent to three-fourths of the capital.

Art. 41.—When the Company comes to an end, or if it is dissolved before the term fixed, the winding-up shall be carried on by the manager, with a joint liquidator appointed by the general meeting. Dissolution and winding-up.

The liquidators shall act jointly, unless one transfers his powers to the others. They shall have complete power to realise the assets of the Company without applying to a Court.

After the dissolution, and until the end of the winding-up, the general meeting of shareholders shall retain the same powers and authority as during the existence of the Company; that is to say, it can change the method of winding-up at first adopted, name new liquidators, settle their remuneration, decide on their powers, accept and give discharge for their accounts.

The surplus of the winding-up, after paying all liabilities, shall be divided proportionately among all the shares.

PARAGRAPH VII.

Art. 42.—All disputes that arise during the continuance of this Company, or in the winding-up proceedings, either between shareholders and the Company or between the shareholders themselves, with reference to the business of the Company, shall be decided at Bordeaux according to the law. Disputes.

Art. 43.—For the purposes of any dispute, every shareholder shall be bound to elect his domicile at Bordeaux, and all notices and writs shall be valid if served within the domicile so chosen by him, without regard to his real residence. In default of election of domicile, all notices and writs shall be valid if served at the office of the *Procureur* of the Republic at the Civil Court of First Instance of Bordeaux.

Art. 44.—The present Company shall not be definitely established, and its business shall not begin, until— Constitution of Company.

1. All the shares have been subscribed, and a fourth of their value has been paid up on them;
2. Nor until the managers have by notarial deed deposited, in accordance with these presents, the list of subscribers and of the payments already made;
3. Nor until a specially called general meeting, in which all shareholders have a right to take part, has

estimated the value of the contributions not consisting of cash, and the privileges reserved in favour of MM———;

4. Nor until another general meeting, in which all the shareholders shall also have a right to take part, has confirmed these contributions and privileges, declared the Company definitely established, and named the committee of inspection.

The second general meeting cannot decide on the confirmation, &c., until a printed report thereon has been at the disposal of the shareholders five days at least before this meeting is called.

The resolutions must be passed by a majority of the shareholders present, and this majority must include one-fourth at least of the shareholders, and represent one-fourth of the cash capital of the Company.

Members who have made the contributions in question or have had privileges reserved to them, shall have no vote at this meeting.

If the contributions and privileges are not confirmed, the present Company shall be null as regards all parties concerned.

These meetings for the valuation and confirmation of contributions and privileges reserved, for deciding on the starting of the Company and for nominating the committee of inspection, shall be announced only five days before their date and only in the *Journal Officiel*.

Art. 45.—The bearer of copies or an abstract of these presents is empowered to have them published within one month after the definite establishment of the Company.

Dont acte, &c.

Made at Bordeaux, at the étude (chambers) of
in the year 1884.

After reading of the above, the parties have signed with the notaries. (Signatures.)

Form of Declaration by the Manager of a *Société en commandite par actions*, prior to its definite establishment (Law of 24th July, 1867).

Date

Before M _____ appeared MM. Bournet
and Raymond, merchants, residing at _____
who have declared that the capital of the
Société en commandite par actions, of which they are

to be managers, and the rules of which have been drawn up in accordance with a deed made before M. has been subscribed in full.

And that each subscriber has paid up a sum equal to (or above) one-fourth of the value of the shares for which he subscribed.

They produced to the undersigned notary a certified document, signed by themselves, comprising—

1. A list of the subscribers, with surnames, christian names, occupations and domicils, and with the number of shares subscribed for by each;
2. The amount of payments already made by the subscribers.

This document drawn up on sheets of stamped paper, with a memorandum signed by the parties and the notaries affixed, is annexed to the present deed in accordance with the law.

The general meeting will therefore be immediately summoned, first to examine and then to confirm, if necessary, the contributions of the managers and the special privileges reserved to them.

By this confirmation, the *Société* will be definitely established, and the same meeting shall immediately appoint the committee of inspection as prescribed by the law.

The bearer of copies or of an abstract of the deed is empowered to publish it.

Dont acte, &c.

(Signatures)

Form of Articles of Association of a *Société Anonyme*.*

Before M. appeared MM. who state that, by a resolution of the directorate dated one of them was empowered, both in his own name and in the name of the other parties to these presents, joint owners of lands situated at to establish and carry on upon the said lands, in accordance with the law, general warehouses with public sale-rooms, as in the plan annexed to the said resolution :

That the intention of the parties is to establish a *Société anonyme* for, &c.

* This deed may also be *sous seing privé*.

For which purpose they have drawn up the following Articles of Association of the Company, which will not be definitely established until after all the conditions prescribed by the law of 24th July, 1867, have been observed.

PARAGRAPH I.

Art. 1.—There is formed between the parties present, and all owners of shares hereafter to be issued, a Company for the purpose of building general warehouses, storehouses, &c., as authorised by the resolution of _____ and for effecting sales or leases of lands hereafter to be owned by the Company, and not required by them for the establishment of such warehouses.

Name of
Company.

Art. 2.—The Company's name shall be "*Compagnie des magasins généraux de* _____."

Art. 3.—The head office shall be at Paris.

Art. 4.—The Company is formed for a period of 40 years, to run from the date of its being definitely established, unless previously dissolved or further prolonged, as hereinafter provided.

Art. 5.—The Company shall not be definitely established until the whole of its shares have been subscribed for, and one-fourth paid up on such shares, nor until a general meeting has confirmed the valuation of the contributions made in kind and the nomination of the members who are to act as the Board of Directors and of the *commissaires*, in accordance with Arts. 1, 4, 24 and 25 of the Law of 24th July, 1867. Until so definitely started the Company is only provisional, and the obligations of the parties now present and of the subscribers are purely conditional.

PARAGRAPH II.

Apports.

Apports.

Art. 6.—The parties now present contribute to the Company:—

1. The land (here specify it);
2. The rights accruing from the Resolution of _____, authorising the building of general warehouses according to the terms of the said Resolution;
3. The plans, documents, &c., which the parties have had drawn up for the purposes of the present Company.

This contribution is made subject to the following conditions:—The price of the land, of the plans and other works,

and of the advantages accruing from the authorisation obtained, is reckoned at three millions, payable in fully paid up shares, to be divided among the parties now present according to arrangement between them. This valuation shall be submitted to the general meeting for its consideration, according to Art. 4 of the Law of 24th July, 1867. If no understanding is reached at the second meeting, as ordered by the said Article, these presents shall be considered as cancelled.

PARAGRAPH III.

The Company's capital consists of:—

Capital.

1. Six thousand shares fully paid up, representing the property, &c., in Art. 6;
2. Two millions of francs, to be raised by subscriptions for 4,000 shares, to be issued at the value of 500 fs. each; total, 10,000 shares, each giving a title to one ten-thousandth of the Company's assets and of its profits.

Art. 8.—The shares shall be delivered as follows:—

The 6,000 shares, after the formal acquisition of the land assigned to the Company and after the formal *purge* has been effected;

The 4,000 shares after one-fourth has been paid up. Until then, provisional certificates stating the payments made shall be delivered to the subscribers, to be exchanged afterwards for shares.

Art. 9.—The liability of each subscriber is absolutely limited to the amount of the shares subscribed by him.

Art. 10.—The provisional as well as the ordinary shares shall be taken from a register with counterfoils, stamped with the Company's seal, and signed by two directors, or by one director and a delegate appointed for this purpose by the board of directors.

Art. 11.—The shares are nominative until fully paid up. They cannot be dealt with until one-fourth has been paid up. Any assignment of them must be effected by a transfer in the Company's books, signed by the transferor and transferee and by one of the directors. The assignment is to be endorsed on the share.

Art. 12.—After the shares have been fully paid up, they may be nominative or to bearer, according to the wish of the person entitled to them. Nominative shares must be trans-

ferred as regulated by Art. 11, shares to bearer by simple delivery.

Art. 13.—The board of directors may authorise the deposit of shares with the Company; it shall decide the form of certificates for such deposit, the manner of taking them out, the expenses of the deposit, and all guarantees on such dealings as may be considered necessary in the interests of the Company and the shareholders.

Art. 14.—The rights and duties attaching to the shares belong to it in whatsoever hands it may come. Possession of the shares implies complete acquiescence in the Articles of Association.

Art. 15.—All shares are indivisible, and the Company does not recognise any fraction of a share. If a share is held by several joint owners, they are bound to have themselves represented by one of themselves only. Heirs, or others claiming under a shareholder, shall have no right to demand the *opposition des scellés* on the property and effects of the Company, nor in any manner to interfere in the business of the Company, their rights are decided by the *inventaires sociaux*, and by the resolutions passed by the general meeting.

Art. 16.—If a nominative share is lost, the Company will only supply a new share in its place on condition of receiving proper security, in accordance with Arts. 151, 152, and 155 of the Code of Commerce. Such new share shall not be delivered until after three months from the advertisement of such loss in two of the newspapers used for legal advertisements.

PARAGRAPH IV.

Accounts and
balance-sheets.

Art. 17.—A summary of the position of the Company in respect of assets and liabilities shall be published every six months.

Further, a balance-sheet shall be drawn up on the 31st December in each year, stating the value of the Company's property and all the assets and liabilities of the Company.

This statement and balance-sheet, with the profit and loss account, shall be presented to the annual general meeting of Shareholders.

Art. 18.—The profits of the Company shall be devoted in the first instance to the expenses of the Company and all charges upon it.

Art. 19.—After the payment of all expenses, a fixed sum, not less than one-twentieth of the net profits, shall be set apart as a reserve fund.

If this reserve fund at any time amounts to 500,000 fs., all payments in respect of it shall cease, but they shall be renewed as usual if the fund falls below that amount.

Art. 20.—Dividends shall be payable annually at the times fixed by the board of directors.

If by the 30th June, in any year, there shall be sufficient profits earned to justify a provisional dividend, a special meeting of the shareholders may be summoned and may authorise the distribution of such dividend. Any dividend not claimed within five years after it becomes payable shall become the property of the Company, according to Art. 2,277 of the Civil Code.

PARAGRAPH V.

Art. 21.—The Company is managed by a board of directors consisting of 11 members. Management of Company.

Art. 22.—Each director must own 50 shares, these shares to serve as guarantee for the management of the Company. They are nominative, non-transferable, and stamped to indicate their inalienability, and are deposited in the *caisse sociale*.

Art. 23.—The directors are appointed by the general meeting, by personal and secret ballot.

The first appointment of directors shall take place at the first general meeting held after the contributions have been confirmed and the conditions complied with in respect of the subscription of the shares and the payment of one-fourth of the capital.

The minutes of this meeting are evidence that the directors present at it accept their appointment, in accordance with Art. 25 of the Law of 24th July, 1867.

Art. 24.—The directors are appointed for six years and are capable of re-election. Two directors retire each year, the retiring directors to be drawn by lot at the annual general meeting.

Art. 25.—The general meeting is to provide for the appointment of a successor in the place of any director who may die, resign, or be prevented from acting.

If at any time between two general meetings the number

of directors should fall below eight, the board shall have power to appoint provisional directors, so that the number of directors may be at least eight. Any director so appointed can only act for the term for which his predecessor would have acted.

Art. 26.—A chairman and vice-chairman of the board are to be appointed every year. If both are absent, the directors present are to choose one of themselves to act as chairman. The chairman and vice-chairman may be re-elected.

Art. 27.—The board shall meet at least twice a month. Five members shall form a quorum.

Art. 28. — Resolutions shall be passed by a majority of the directors present at the meeting. If the votes are equal, the chairman shall have a casting vote. No proxies will be allowed at these meetings.

Art. 29.—The Resolutions are to be drawn up in the minutes and entered in a book, and signed by the member who acts as chairman of the meeting. Copies or extracts from the resolutions for use in Court or elsewhere are certified by the chairman of the meeting, or the member who performs his duties.

Art. 30.—The Board of Directors is to have full power in all matters concerning the management and direction of the Company, viz. :—

To settle the general expenses of the management ;

To authorise bargains of every kind, sales of land, &c., necessary to carry on the business of the Company ;

To purchase machines, engines, and generally all things requisite for the undertaking ;

To authorise purchases and sales of moveable property ;

To authorise a resale of land or buildings not required by the Company, and to receive the price of the same, provided that the total value does not on any occasion exceed 300,000 fs.

To grant and accept all leases ;

To authorise the removal of *opposition* or mortgage ;

To undertake all judical suits, either as plaintiff or defendant ; to deal with all arrangements, compromises, &c.

To authorise all withdrawals, transfers or assignments of property, stock, and shares belonging to the Company, and to give receipts and discharges ;

To decide on the investment of any available funds ;

To decide all rules relative to the organisation of the *employés*, and the control of the Company's establishments;

To appoint or revoke the appointment of all managers and agents; to define their duties and powers, fix their salaries, and, if necessary, to settle the amount of the security which they are to give;

To fix and modify prices, and to carry out all arrangements in respect thereof;

To draw up the accounts to be submitted to the general meeting.

To report to the general meeting of shareholders upon the position of the Company's business;

To borrow money, with the authorisation of the general meeting, either by issuing bonds or otherwise;

Finally, to manage generally all the business, and look after all the interests of the Company.

Art. 31.—The Board of Directors may delegate to one or more of its members general and special powers, and for one or more special purposes. It may also delegate to one or more of its members permanent powers for current business, or it may delegate to persons not members such powers as may be required by the conduct of the business and the profitable management of the undertaking, and, in particular, the management of one or more of the Company's establishments.

Art. 32.—Transfers of shares and negotiable instruments belonging to the Company, deeds of purchase, sale and exchange of real property belonging to the Company, orders on the bank and on all depositors of the Company's funds, negotiations, bargains, and generally all deeds importing contracts or obligations on the part of the Company, must be signed by two Directors, unless in the case of an express delegation to one single Director.

Art. 33.—The Directors shall receive a *jéton* of attendance, the value and form of which shall be decided by the general meeting.

Art. 34.—The directors do not incur by reason of their administrative acts any personal or joint and several liability in regard to the obligations of the Company. They are only responsible for the performance of the duties entrusted to them.

Art. 35.—The directors may not take or keep any interest, direct or indirect, in an undertaking or a bargain

made with the Company or on account of it, unless so authorised to do by the general meeting. Every year a special account is rendered to the Company of the undertakings or bargains authorised by it. If three-fourths of the Company's capital should be lost, the directors are bound to summon a general meeting of all the shareholders for the purpose of deciding upon the question of winding up the Company.

Committee.

Committee.

Art. 36.—A committee of three persons is appointed, the members to be nominated at the first general meeting of the Company immediately after the directors, and in the same manner. The committee may be selected from non-shareholders. Their duties last for one year, and they are eligible for re-election. If any of the committee so appointed refuse or are unable to act, a substitute is to be appointed by order of the president of the Tribunal of Commerce on the application of any person interested, and after due notice to the directors.

Art. 37.—The committee are to report to the general meeting on the position of the Company, and on the balance-sheet and accounts presented by the directors. The committee may inspect all books and examine all the operations of the Company as often as they think fit within the three months preceding the date of the annual general meeting. In case of urgency, the committee may summon a general meeting. The half-yearly accounts are to be laid before the committee. The stock-taking, balance-sheet and profit and loss account, are to be transmitted to the committee at least 40 days before the general meeting.

Art 38.—The committee shall receive a *jéton* of attendance, or a remuneration to be decided by the general meeting.

PARAGRAPH VI.

General Meeting.

General meeting.

Art. 39.—The general meeting, duly constituted, represents the whole of the shareholders.

Art. 40.—It meets annually before April 1st, and extraordinary meetings may be summoned by the directors or the committee.

Art. 41.—Every holder of, or person entitled to 10 shares, is *ipso facto* a member of the general meeting. At the

meetings convened for the purpose of examining or confirming the contributions or the privileges reserved, and for the election of the first directors and of the committee, every shareholder, whatever be the amount of his shares, may take part. Only shareholders can represent or act as proxy for other shareholders. The form of powers of attorney for this purpose is decided by the board of directors.

Art 42.—The general assembly is regularly established when the shareholders actually present or represented hold at least one-fourth of the Company's capital. If the members present do not represent this amount, the meeting stands adjourned for a fortnight.

Any resolutions passed at this second meeting are binding, whatever amount of capital is represented at it, provided that they deal only with questions which were in the paper for the previous meeting.

Art. 43.—General meetings are summoned by advertisements inserted in two of the chief Paris newspapers for legal advertisements a fortnight before they are held. Notice is to be given of the object for which the meeting is summoned.

Art. 44.—Resolutions dealing with the examination of the *apports*,

The appointment of the first directors,

The statement of the promoters,

The raising of loans extending over a long period,

Arrangements for incorporation with other Companies,

Alterations of the Articles of Association, and

Extension or winding-up of the Company must be passed at a meeting comprising at least one-half of the capital of the Company.

If at the meeting summoned for the above purposes less than one-half of the capital is represented, it can only pass provisional resolutions. A new meeting is convened; two advertisements, published at intervals of a week at least one month before the meeting, in one of the above-mentioned newspapers, inform the shareholders of the provisional resolutions, and the resolutions are carried if confirmed by the second meeting provided at least one-fifth of the capital is represented at it.

Art. 45.—Shares are left at the head office five days before the date of the meeting. Each shareholder so depositing his shares receives a ticket of admission bearing his name,

the number of shares deposited, and the number of votes to which he is entitled on them.

At meetings called to examine the *apports* or the statement of the promoters, or to appoint the first directors, no shareholder can under any circumstances be entitled to more than 10 votes.

Art. 46.—The general meeting is presided over by the chairman of the board of directors, or, if he is unable to attend, by the vice-chairman, and in default of both, by the senior member of the board.

The largest shareholders present act as scrutineers; the secretary is appointed by the *bureau*.

Art. 47.—The general meeting receives the report of the directors and the report of the committee. It discusses the accounts and confirms them if approved.

BILLS OF EXCHANGE.

CHAPTER I.

Bills of Exchange, Promissory Notes, Cheques, and other Negotiable Instruments.

Definition of Bills of Exchange.

The Parties thereto.

The Laws relating to the subject.

A *lettre de change* (bill of exchange) is a document drawn up in the form prescribed by law, pursuant to which the drawer orders a person resident in another place to pay a certain sum to the party named in the instrument, or to the transferee of such party. Definition of a bill of exchange.

Three persons are necessarily parties to a bill of exchange: Parties, the *tireur*, the *preneur*, and the *tiré*.

The *tireur*, or drawer, is he who draws the bill, and who, receiving value in one place, binds himself that a sum of money shall be payable in another place. *Tireur.*

The *preneur* is the party who receives the bill in payment of the consideration furnished to the drawer. *Preneur.*

The *tiré*, or drawee, is the person to whom the drawer addresses the order to pay. *Tiré.*

Other parties can be comprised in a bill, such as the *tireur pour compte* (drawer for a third person); the *accepteur* (the acceptor), who is, in fact, the drawee when he has accepted the command to pay given by the drawer; the *accepteur par intervention* (acceptor for honour); the *payeur par intervention* (payer for honour); the *recommandataire* or *besoin* (person to pay in case of need); the *domiciliataire* (person at whose residence the bill will be paid); and the *donneur d'aval* (surety). Other parties.

The French law relating to bills of exchange and negotiable instruments is based upon Arts. 110 to 189, inclusive, of the Code of Commerce, promulgated 21st September, 1807. The succeeding chapters contain a textual translation of the Articles of the Code and of the other special laws appertaining thereto. To each Article have been appended explanatory notes embodying subsequent legislation, and pointing out the divergences and contrasts existing between the laws of France and England upon the subject.

CHAPTER II.

BILLS OF EXCHANGE.

OF THE FORM OF A BILL OF EXCHANGE.

1. *Of the requisite and component parts of a bill of exchange.*
2. *Of bills drawn on account of third parties.*
3. *The legal effect of fraudulent statements contained in bills.*
4. *Of married women and their capacity to contract.*
5. *Of minors, their capacities and disabilities.*
6. *Of partnerships and Companies.*

Definition.
Component
parts.

Art. 110.—A bill of exchange* is drawn from one place upon another (112, 189). It is dated. It states the sum payable, the name of the party to pay the same, the date and place where payment should be made (129). The value received in cash, goods, in account or otherwise (137).

It is payable to the order of a third party, or to the order of the drawer (137).

If the bill is drawn in sets of 1st, 2nd, 3rd, &c., it is so expressed (147).

Value received
must be ex-
pressed with
precision.

The nature of the value received must be expressed:—*valeur en espèces* signifies value received in cash; *valeur en marchandises* represents the price upon a sale of goods; *valeur en compte* a sum due in account between the parties. The value can also be expressed in other ways, such as for commissions due, brokerage, &c. The words *valeur reçue* (value received) alone are not sufficient, neither can the value

* *Lettre de change.*

be vaguely expressed, viz., *valeur suivant nos conventions de ce jour* (value according to agreement between us of this date).

In case of omission of any of the essential conditions of Art. 110, the bill will be void and of no effect. The above-mentioned clause does not specifically pronounce such nullity, but it results from the context that a writing which does not contain the particulars thereby required is not a bill of exchange. It has been admitted at all periods that the above forms were compulsory under penalty of nullity, and the code was designed to give effect to the same doctrines.

Bills of exchange drawn payable to bearer are illegal in France. Bills to bearer.

A bill of exchange should be drawn in one place to be forwarded to another for acceptance or payment. A bill of exchange is the means of carrying into execution the contract of exchange pursuant to which a *valeur* or consideration is given *in one place* in order to receive a sum of money *in another*. This constitutes the essence of the contract.

The two places need not necessarily be commercial towns or cities, and no distance has been fixed by law as requisite to exist between them. Such questions are in the discretion of the Courts.

Art. 111.—A bill of exchange can be drawn upon one party and payable at the domicile or residence of a third. How bills can be drawn.

It can be drawn by the order and for the account of a third party.

The drawee will arrange to provide the funds at the domicile of the third party at maturity. In default the latter is not compelled to pay the bill.

A bill can be drawn by an agent acting in the name of his principal; thus a clerk or the wife of a trader signing such bill would add *par procuration de* In this case the trader, donor of the power, would be alone liable. The above practice is apt to throw doubt upon the validity of the bill, as the procuration can be disputed. The Bank of France does not discount such bills. Bill drawn by agent.

Art. 112.—All bills of exchange containing false statements in respect of name, profession, domicile, or the places where the same are drawn Effect of false statements.

or payable, have the force and effect of "simple promises" only.

Validity of special defences under this Article.

The decisions are somewhat conflicting as to whether any of the defences arising under Art. 112 can be pleaded against a *bonâ fide* holder for valuable consideration. The weight of authorities, however, is in favour of the *bonâ fide* holder.

Married women, &c.

Art. 113.—The signatures of married and unmarried women, non-traders, upon a bill of exchange, bind them only to the extent of "simple promises" (*promesses simples*).

Women traders may accept bills for the purposes of their business.

Bills of exchange accepted by women, being traders, are perfectly valid. The presumption is that such bills are signed by them for the requirements of their business, and before 1867 they were liable to imprisonment for debt in relation thereto.

Bills signed by women non-traders.

Bills signed by women being non-traders, and by married women without the authorisation of their husbands, are void as against them, and have not even the force of a "simple promise." The law is the same in respect to bills accepted by women traders which do not relate to their particular business.

A married woman can sign a bill as the agent of her husband.

Husband and wife separate in business.

If the wife carries on a business distinct from her husband, she may, without his authority, bind herself for things which appertain to her business. In this case the husband also is bound by her acts, unless their estates are separate.

Minors non-traders.

Art. 114.—Bills of exchange signed by minors, non-traders, are void as against them, without prejudice to the rights of the other parties thereto, pursuant to Art. 1,312 of the "Code Civil."

Minors who are traders.

Art. 1,312 of the *Code Civil* provides that minors cannot be exonerated from their engagements if they have benefited by them. A minor, being a trader, has full capacity to sign a bill of exchange, provided it concerns his business. The fact of his signature raises that presumption; and the employment by him of a form habitually used in commerce is equivalent to a declaration upon his part that the instrument was signed by him as a trader, and the onus of proof is upon him to establish the contrary.

Minors non-traders.

As regards minors, non-traders, Art. 114 enacts that the obligation is void, and has not even the force of a "simple

promise." In effect a minor is incapable of binding himself, even civilly, without the authority of his guardian. He is in the same position in this respect as a married woman.

A bill of exchange accepted by a minor and ratified after his majority becomes a perfect bill to all intents and purposes.

Ratification after attaining majority.

The other parties to the bill remain severally liable notwithstanding the disability of the minor, and his incapacity applies whether he be drawer, acceptor, indorser, or guarantor.

Liability of other parties.

The defence of infancy can be pleaded against a *bonâ fide* holder. The onus of proof that the bill does not relate to his trade lies upon the minor pleading it.

Against *bonâ fide* holder.

Majority is fixed at the completion of the 21st year, at which age every man is considered in full possession of all civil rights. Marriage virtually emancipates a minor, and a minor, though unmarried, may be emancipated by his father, and if the father is dead, by his mother, when he attains the full age of 18. This is effected by a simple declaration of the father or mother before a justice of the peace. A minor who is an orphan may also be emancipated by the family council, but he must have attained the full age of 18.

Emancipation.

An emancipated minor cannot borrow under any pretext without the authority of the family council, officially confirmed by the Court of First Instance, nor can he sell or alienate his estates otherwise than by the rules applicable to minors. In the event of his having contracted obligations, the Court will take into consideration the nature of the transactions and the bona fides of the contracting parties, and may reduce them accordingly.

Conseil de famille.

An emancipated minor engaged in trade is considered as of full age in all transactions that relate to his business.

Authorisation by deed.

An emancipated minor cannot trade until he has received the authorisation of his parents or of the family council, confirmed by the Civil Court. The deed of authorisation must be registered and affixed in the Tribunal of Commerce of the place in which the minor intends to establish his domicile.

In mercantile partnerships, each partner can bind his co-partners by becoming a party to bills or notes in the name of the firm or *Société*.

Liability of partners in respect of bills.

In France the law recognises three species of commercial partnerships, viz., The *Société en nom collectif*, the *Société en commandite*, the *Société Anonyme*.

Kinds of partnerships.

The *Société en nom collectif* is a partnership in which the whole of the members are known to the public, and are jointly

Société en nom collectif.
Liability of members.

and severally liable in respect of the partnership debts. The partnership must carry on business under a style or firm containing the names of some or all of the partners. The partnership deed must be registered and advertised. The firm can agree to delegate one or more of its members to administer and manage the partnership business, and in this event the appointment must be published, to serve as notice to third parties that the remaining partners have no further power to accept bills, or pledge the credit of the *Société*. In default of such appointment, all or either of the members can act.

En commandite. The *Société en commandite* is a species of partnership, entered into between one or several traders and one or several parties or capitalists, called *commanditaires*, or *associés en commandite*.

Distinct liabilities.

In the above *Société* there are two kinds of partners—the actual responsible partners to the world, and the *commanditaire*, viz., the party who advances money to the existing firm. The former are jointly and severally liable for all the debts of the concern, the latter to the extent only of his investment in the undertaking. The *commanditaire* cannot interfere nor take part in the management or operations of the *Société*. He cannot bind the partnership by becoming a party to bills or notes, as his name does not appear in the style or firm of the undertaking, neither is he bound beyond his venture in respect to any transactions entered into by the acting partners. The deed setting out his participation as *commanditaire* must be registered, and an extract therefrom published. (Law of 24th July, 1867.)

Sociétés anonymes.

Sociétés anonymes are Companies divided into shares, and resemble limited liability Companies in England. The same general principles of law apply in cases relating to bills of exchange.

The subject of partnerships and Companies will be found fully discussed in another place (*see* p. 117).

I. O. U.'s are not known in France.

CHAPTER III.

OF PROVISION.

1. *Of the obligations of the drawer as regards furnishing provision.*

2. *Of the effect of provision at maturity.*

3. *Of the absence of provision and the effects thereof.*

Art. 115.—The provision should be furnished by the drawer, or by the party for whose account the bill is drawn, but the drawer for account of a third party remains nevertheless personally responsible towards the indorsers and the holder alone (111, 117.).

Duty of the drawer to furnish funds to meet the bill.

Upon the drawing of a bill the drawer alone is liable to the holder. He has bound himself that the amount of the bill shall be paid at maturity by the drawee. Apart from this first obligation, he has undertaken to procure the acceptance of the drawee before maturity. In order to compel the drawee to pay the bill and to accept the same before maturity, the drawer must furnish him with the means of fulfilling the engagement, which means are denominated provision.

Liability of drawer.

Provision.

Thus, by *provision* is meant the sum destined for the payment of the bill.

The drawer must either obtain payment by the drawee of the bill at maturity, or he must himself provide for payment being made. The drawer, therefore, must furnish the *provision*.

The fact of the drawee having received provision is important, as, if the holder is not paid at maturity, he must protest the bill the following day, and notify the non-payment to the sureties, and proceed against them. In default of making the protest within the periods fixed by law, he cannot sue the drawer if the latter can prove that he furnished *provision*. If he cannot prove this, it is an admission that he has not provided the needful funds to meet the bill, and therefore he cannot be prejudiced by the default or delay in making the protest, and the holder retains his recourse against him. But indorsers can plead the default without being obliged to prove that provision was given.

Effect of non-payment.

Accommodation bill.

Bill "on account
of third party."

A bill can be drawn for the account of a third party. We are therefore led to consider the obligations of the drawer, and of the party on whose behalf he drew (the *donneur d'ordre*). Art. 115, above cited, enacts that when a bill is drawn on behalf of a third party, the latter, the *donneur d'ordre*, must furnish the provision; but that the drawer on his behalf remains, nevertheless, personally liable to the indorsers and to the holder alone. Thus, the fact of the *donneur d'ordre* being compelled to furnish provision does not release the drawer from so doing, but the obligation of the latter applies only to the indorsers and the holder.

Bill drawn "for
account of
drawer."

A drawer of a bill on his own account, being the principal of the drawee or acceptor, is bound to indemnify him for that which he pays in the execution of his mandate. Therefore, should the drawer not provide the funds for the drawee to meet the bill, the latter can sue him for reimbursement of the sum he paid at maturity. Should the acceptor fail to pay the bill at maturity, and be sued and compelled to pay, he can further recover from the drawer the amount of the bill and the expenses he has been put to in the action. But a drawer on behalf of another (*tireur pour compte*) is not liable as above to a drawee who purely and simply accepts the bill. As regards the drawee, the *tireur pour compte* is simply the agent of the *donneur d'ordre*, and binds his principal without becoming responsible himself.

Provision
implied.

Art. 116.—There exists "provision" if, at the maturity of the bill, the party upon whom it is drawn be indebted to the drawer, or to the party upon whose account the bill was drawn, in a sum at least equal to the amount of the bill of exchange.

Presumption
in case of
acceptance.

Art. 117.—By acceptance "provision" is presumed to exist, and as regards indorsers acceptance establishes proof thereof.

Whether there be acceptance or not, the drawer alone is bound to prove, if it be disputed, that the parties upon whom the bill was drawn had provision at maturity: otherwise he is compelled to give security for the same, although the protest may have been made after the periods fixed by law (118, 170, 173).

CHAPTER IV.

OF ACCEPTANCE.

1. *Of the guarantee of the drawer and indorsers in regard to acceptance and payment.*
2. *Of protest in default of acceptance.*
3. *Of the liabilities of the drawer and indorsers thereupon.*
4. *Of the obligations of the acceptor.*
5. *Of the form of acceptance.*
6. *Of bills payable elsewhere than at the residence of the acceptor.*
7. *Of conditional and partial acceptances.*
8. *Of presentation for acceptance.*

Art. 118.—The drawer and indorsers of a bill of exchange are jointly and severally sureties for the acceptor and for the payment of the bill at maturity. (121, 128, 136, 140, 143, 144).

Position of
drawer and
indorsers.

Art. 119.—The refusal to accept is proved by a document called *protest for non-acceptance*.* (126, 156, 163, 173).

Refusal to
accept.

Art. 120.—Upon notification of the protest for non-acceptance, the indorsers and the drawer are respectively bound to give security to ensure the payment of the bill at maturity, or to pay the same, together with the expenses of protest and of re-exchange. The party giving security for the drawer or for an indorser is jointly and severally liable only with the parties for whom his security is given.

Notification of
protest for non-
acceptance.

The holder and indorsers are all compellable to give security, but it can only be obtained from one of them. They are liable respectively, that is to say, the party having furnished security can enforce the same right against his co-guarantors. The object of the above security is to replace the personal guarantee of the drawee in providing, where default has been made.

Who must give
security.

When the drawee refuses acceptance, the law provides that the drawer and indorsers are *respectively liable* to furnish

When accept-
ance refused.

* *Protêt faute d'acceptation.*

security. The object of the word *respectively* is to indicate the recourse of each and all of the parties against each other. Thus, upon non-acceptance, the drawer proceeds against the last indorser and obtains security, and the latter can sue the indorser preceding him and obtain the like, *ainsi de suite* up to the drawer inclusive.

Rights of holder in respect of security.

The holder cannot compel ALL the parties to the bill to give security. He must choose between the drawer and any one of the indorsers. When one has furnished security, the others are liberated. This question has been much controverted, but the above ruling is the law.

Instead of giving security, any party from whom it is demanded by the holder can pay the amount of the bill, together with the expenses of protest and re-exchange, which we shall discuss *infra*.

Rights of parties *inter se*.

Each of the parties liable is free to select the mode he prefers, viz., to give security or to pay the bill. It therefore follows that, if one of the parties has preferred to pay, he cannot in his turn compel the other parties to pay, but must accept security should they elect to furnish it.

Presentation for payment.

At maturity, the holder should always present the bill to the drawee, although he may have refused acceptance (Art. 163), as he is the principal charged with the payment, and he may have altered his decision from having received provision in the meantime.

An indorser, having given security, can proceed against his immediate indorser to compel him to do the like in his turn, and so on up to the drawer.

Acceptor.

Art. 121.—A party accepting a bill of exchange takes upon himself the obligation of paying the amount thereof. An acceptor cannot recall his acceptance even if the drawer had suspended payment without his (acceptor's) knowledge before he had accepted the bill.

Liability of acceptor.

The above Article must not be construed as precluding cancellation under any circumstances. In the case in question, the hypothesis relied upon is that the error is not considered as substantial. In effect it is not certain that the drawee would not have accepted if he had known of the suspension of the drawer; he might have accepted for his honour.

Duress.

An acceptance extorted by violence is absolutely void.

An acceptance obtained by fraud is void as against the **Fraud.** wrongdoer if he remain the holder at maturity, but as regards third parties without notice, the acceptor is liable. (*See also Art. 114.*)

An acceptance cannot be cancelled even in the event of the signature of the drawer being a forgery.

Acceptance is the declaration pursuant to which the drawee contracts with the holder of the bill an engagement to pay the amount thereof at maturity, and at the place in which the instrument is payable. This contract is essentially unilateral, and is in the nature of a guarantee, as the drawee promises to the holder to carry into effect the engagement entered into by the drawer and guaranteed by the indorsers.

Explanation of acceptance.

A drawee who accepts must have legal capacity to bind himself by a bill of exchange.

The holder of a bill has the right to require acceptance before maturity, but no obligation so to do is imposed upon him. He is at liberty to dispense with acceptance, and to present the bill at maturity only for payment.

Presentation for acceptance is, however, necessary in the case of a bill payable at a certain time after *sight*.

Bills payable at a certain time after sight.

The law of France grants the drawee 24 hours to give or refuse his acceptance from the presentation of the instrument, to enable him to verify the signature of the drawer, and to examine his accounts with him to ascertain whether he is or not indebted to him.

Time allowed to acceptor.

Should he fail to return the bill after the expiration of the 24 hours, accepted or not, he is liable in damages to the holder.

Art. 122.—The acceptance of a bill of exchange must be signed.

Signature of acceptor.

The acceptance is expressed by the word “*accepté*.”

The acceptance must be dated if the bill is payable at one or several days or months after sight; and in the latter case, in default of the acceptance being dated, the bill is payable at the expiration of the term expressed, calculated from the date of the bill.

The acceptance of a bill of exchange must be in writing. The signature of the acceptor is necessary, and would be sufficient alone to bind him if placed upon the instrument. This is apparent from Art. 140, which renders all parties

Essentials of acceptance.

who have *signed* the bill jointly and severally liable for the amount thereof.

Formal words. The word *accepté*, however, renders the acceptance formal, but it could be replaced by the French equivalent for "I will pay," "I will discharge," "I will honour."

Amount of bill. The acceptor need not set out in writing the amount of the bill, as he refers to the sum mentioned by the drawer, but as a precaution against forgery it is prudent that he should write the amount for which he accepts in full.

Where payable. *Art. 123.*—The acceptance of a bill of exchange payable in a place other than the residence of the acceptor must state the domicile at which payment will be made, or the requisite legal formalities complied with (143, 111).

Unconditional. *Art. 124.*—An acceptance cannot be conditional; but it can be limited as regards the amount accepted for, and in this event the holder must protest the bill for the surplus (156).

Conditional acceptance not valid. The acceptance must be pure and simple. The holder could refuse a conditional acceptance, or one changing the date of maturity or the mode or place of payment set out in the bill.

Partial acceptance. The holder is compelled to receive a bill which is accepted for a portion of the amount, and should protest it for the surplus and obtain security from the drawer and indorsers, as explained elsewhere.

Time for acceptance. *Art. 125.*—A bill of exchange should be accepted upon presentation, or at latest within 24 hours therefrom. After the expiration of 24 hours, if the bill be not returned accepted or non-accepted, the party retaining the same is liable for damages to the holder.

CHAPTER V.

OF ACCEPTANCE BY INTERVENTION.*

1. *Of the parties and necessary conditions to acceptance by intervention.*
2. *Of notice of intervention.*
3. *Effect of acceptance by intervention upon the parties to the bill.*

Art. 126.—In the case of protest for non-acceptance, the bill of exchange can be accepted by a third party intervening for the drawer or for one of the indorsers (119). Acceptance by third party.

The intervention is mentioned in the protest and must be signed by the party intervening (Art. 158).

Intervention is equivalent to becoming voluntary surety; it is also called *acceptation par honneur*, or *sous-protêt*. Acceptance for honour.

Three conditions are necessary for intervention: (1) That the acceptor by intervention be not otherwise liable to pay the bill, as in that event his intervention would afford no fresh security. (2) The protest must have been made; it must be proved that the drawer will not accept. (3) The acceptance must be mentioned in the protest and signed by the party intervening. Essential conditions.

An acceptance by intervention cannot be given by the drawer or by one of the indorsers, because they are already sureties for the payment of the bill.

The drawee can accept by intervention. It may happen that not having received provision from the drawer he may refuse to accept purely and simply, but he may intervene for the honour of one of the indorsers.

The protest need not precede the acceptance of the drawee by intervention.

The party intervening should immediately notify his intervention to the person for whom he intervened.

* *Supra* protest, or for honour.

Art. 127. — The party intervening is bound to notify his intervention without delay to the person for whom he intervened.

Notice to be given by acceptor for honour.

This is to enable the latter to adopt the necessary measures to protect his interests. Should it be the drawer, for instance, he will not send the *provision* to the drawee who has refused to accept, or he would withdraw that furnished by him.

It will be observed that no stated time is prescribed. The law says that the notification must be made *without delay*. In case of dispute the decision rests with the Courts.

Art. 128. — The holder of a bill of exchange preserves all his rights against the drawer and indorsers in the case of the drawee refusing acceptance, notwithstanding all acceptances by intervention (“droits du porteur,” 118, 160).

Acceptance for honour does not affect the holder's rights.

The effects of an acceptance by intervention are not the same as those produced by a direct acceptance of the drawee. We have already seen that the acceptance of the drawee discharges the drawer and the indorsers from the obligation of procuring such acceptance, but when an acceptance is given by a third party who intervenes, the substitution of the latter for the drawee is a change with which the holder is not bound to content himself. Thus, it is enacted that notwithstanding all acceptances for honour, the holder preserves all his rights against the drawer and the indorsers, resulting from the non-acceptance of the drawee; consequently, the holder, notwithstanding the acceptance by intervention or for honour, can proceed against the parties for whom intervention was made and compel them to furnish security, or to pay the bill in the manner explained in the observations upon Art. 120.

If the intervening party is solvent the holder will obviously be satisfied with his acceptance.

CHAPTER VI.

OF MATURITY.

1. *Of the periods at which a bill of exchange can be drawn.*
2. *Bills drawn at sight, when payable.*
3. *Bills drawn at sight, maturity how fixed.*
4. *Of usances and calendar months.*
5. *Of bills payable in fair time.*
6. *Of bills payable upon public holidays.*
7. *Of days of grace and local customs.*

Art. 129. — A bill of exchange can be drawn as Bills drawn at fixed dates.
follows :—At sight

| | | |
|-------------------------------|---|--------------|
| At one or several days | } | after sight. |
| At one or several months | | |
| At one or several usances | | |
| At one or several days | } | after date. |
| At one or several months | | |
| At one or several usances | | |
| At a day fixed or determined. | | |
| At fair time (133). | | |

Art. 130. — A bill of exchange drawn at sight is At sight.
payable upon presentation (160).

Art. 131.—The maturity of a bill of exchange

| | | |
|---------------------------|---|-------------|
| At one or several days | } | after sight |
| At one or several months | | |
| At one or several usances | | |

is fixed by the date of acceptance, or by that of the protest for want of acceptance (126).

Art. 132. — A usance is reckoned as thirty days, Usances.
commencing the day following the date of the bill.

Months are calendar months, calculated according to the Gregorian Calendar.

Art. 133. — A bill of exchange payable during Fairs,
fair time matures the day previous to the closing of the fair, or the day of the fair if the same last but one day. (Arts. 161, 162.)

Art. 134. — When a bill of exchange matures Holidays.
upon a legal holiday, it is payable the day preceding (Arts. 161, 162, and note).

Art. 135. — All days of grace, favour, usage or local custom for the payment of bills of exchange are abolished (Arts. 157, 161).

Days of grace,
&c., abolished.

If a bill is drawn payable one or several months after date, it matures on the date of the month of payment corresponding with that of the month in which it was drawn. Thus, a bill drawn on the 10th January at two months is payable on the 10th March. A bill drawn on the 31st day of January at three months would be payable on the 30th April, and so on in corresponding cases where the number of days in different months is unequal. These points are of importance, as will be seen in the chapter upon Protests.

CHAPTER VII.

OF INDORSEMENT.

1. *Of the form and effect of indorsements.*
2. *Of the date and consideration.*
3. *Of the effect of irregular indorsements. Blank indorsements.*
4. *Of antedating of indorsements. Forgery.*

Art. 136.—The property in a bill of exchange is transmissible by indorsement.

Indorsement.

The indorsement must be in writing, and is usually placed at the back of the bill, but indorsements can be commenced upon the face of the instrument upon the right hand and continued to the back of the document, or can be continued upon a slip annexed to the bill.

Common form.

The following is the common form of indorsement:—

“Payez à l'ordre de M . . . valeur reçue , . . .
“ Le 1 Avril, 1878.

(See forms.)

Signed.)

“DUVAL.”

Signature of
indorser.

The indorsement need not be written by the indorser himself, his signature thereto is sufficient. The signature need not be preceded by the words *bon* or *approuvé*. The indorsement can be made by an agent duly authorised.

Law of the
place where
indorsement
made.

The form of indorsement is governed by the law of the place in which it is made—*locus regit actum*. If the bill, for instance, were indorsed in London, although it had been drawn in France and would be payable there, the validity thereof and its effects would be governed by English law.

Bills can be indorsed after maturity.

Art. 137.—The indorsement is dated. It sets out the value received. It mentions the name of the party to whose order it is passed. (Art. 110.)

The statement of the value received is required in order that it may be seen what security exists for payment of the bill, but in practice little importance is attached thereto. Value received must be set out.

The object of inserting the date in indorsements is to ascertain whether, in case of the bankruptcy of the indorser, the indorsement was made subsequently thereto, in which event it is void. Date of indorsement.

Art. 138.—If the indorsement be not in conformity with the preceding section, it does not take effect as a transfer, but operates as a procuration only. Effect of incomplete indorsement.

If a bill is indorsed in blank, the particulars required by Art. 137 can be filled in by any person, even by the party to whom the bill is transferred, and the indorsement can thus be made regular; and neither the holder nor the other parties will be allowed to set up that such particulars were filled in subsequently to the blank indorsement for the purpose of rendering it complete. Indorsement in blank may be filled up.

The holder of a blank indorsement has, however, no power to fill in the details above-mentioned after the death or bankruptcy of the indorser.

The indorsement of a bill drawn in a foreign country, and payable therein, has force in France when it is made in the form prescribed by such country.

An indorsement in blank confers upon the holder the right to sue the acceptor for payment, but the latter can plead the same defence against the holder as he could against the indorsee through whom the holder acquired his right. Rights of acceptor.

A blank indorsement contains the signature only of the indorser. In practice a party negotiating a bill often simply affixes his signature thereto and passes on the instrument, the object being to save time, but with the intention of transferring his property in the bill. This mode of transfer is admitted as sufficient in several countries, among others Belgium and England (*See Appendix A, "Blank Indorsements"*), and the French law admits its sufficiency to transfer the property in Effect of a blank indorsement.

“cheques payable to order” (Law 14th June, 1865). A blank indorsement presents other advantages, viz., it can circulate in the same manner as a *titre au porteur*; it can be passed from hand to hand without any mention of the successive holders, the last holder having simply to fill in the blanks to become the legal holder. In this way, however, the guarantee of the successive holders is lost, as no trace remains of their having been parties to the bill.

The holder of a bill transferred by an irregular indorsement is subject to all the equities attaching thereto, and the drawee, acceptor, or prior indorser can plead the same defences against the holder in an action on the bill as they could against the previous indorser from whom he received the bill.

An indorsement which does not fulfil all the conditions mentioned in Art. 137 is called *irrégulier* (irregular), and does not transfer the property in the bill; the holder then is merely the agent of the indorser.

Results of
irregular
indorsement.

The consequences of an irregular indorsement are: (1) The creditors of the indorser can attach the amount of the bill of exchange in the hands of the drawee. (2) The drawee, when he is a creditor of the indorser, can plead a set-off in an action on the bill. (3) The indorser can, provided the bill has not been paid, and the holder has not negotiated the bill by means of a regular indorsement, revoke the procuration and prevent the holder from receiving payment.

The holder, pursuant to a blank indorsement, has a right to demand of the drawee acceptance of the bill and to receive payment at maturity, and give a receipt; he can also transfer the property in the bill by a regular indorsement.

Art. 139.—It is forbidden to antedate indorsements. Such an offence is forgery.

Antedating
indorsement is
forgery.

The object of the above provision is to prevent a holder of a bill, pursuant to a blank indorsement, from antedating the same after his bankruptcy, in order to receive payment of the bill by means of a third party. (The law upon forged bills will be found in the notes to Art. 149, *infra*.)

CHAPTER VIII.

OF JOINT AND SEVERAL LIABILITY.

(DE LA SOLIDARITÉ.)

1. *Of the relation of the parties to a bill of exchange towards the holder.*

Art. 140.—All the parties who have signed, accepted, or indorsed a bill of exchange are jointly and severally liable to the holder (Arts. 118, 160, 164, 187).

The parties are jointly and severally liable. The holder must apply in the first instance to the acceptor of the bill or the maker of the promissory note; he cannot exercise his right of proceeding against all the parties to the instrument until after the protest has been made against the acceptor or maker as above. A party paying the bill has recourse against all preceding indorsers.

Joint and several liability of parties to the bill.

The holder can sue all the parties collectively or individually. See Art. 5 of the Law of 5th June, 1850, as to the rights of the holder of an unstamped bill against the other parties.

CHAPTER IX.

OF AN "AVAL" (SURETY).

1. *Payment of a bill of exchange can be guaranteed by an "aval."*

2. *Form and effect of guarantee and parties thereto.*

Art. 141.—The payment of a bill of exchange, *Aval.* independently of acceptance and indorsement, can be guaranteed by an "aval" (surety).

The person who becomes surety is termed the *donneur d'aval*. *Surety for payment.*

"*Aval*" is a species of suretyship entered into by a person capable of becoming a party to a bill of exchange. An *aval* cannot be given by a party already liable on the bill, as such a surety would not increase the guarantee possessed by the holder. An *aval* can be given on the bill itself, or by a separate instrument; a letter is sufficient. *Who can become surety.*

Formal words. The words *aval* or *bon pour aval* are not absolutely requisite; their equivalents will suffice, thus—“*cautionnement* or *bon pour la somme de*, or *bon pour la garantie du montant d'autre part*. The simple signature of the surety near that of the party he wishes to guarantee has been held sufficient.

The guarantee may be conditional.

An *aval* can be conditional. It can be given for part of the amount of the bill only, or for a limited time, also upon condition that the donor be not subjected to the jurisdiction of the Tribunal of Commerce, &c.

The surety can avail himself of the same defences and remedies as the party for whom he became security.

Guarantees how given.

Art. 142.—This guarantee is given by a third party, upon the bill itself or by a separate document.

Liability of guarantor.

The guarantor is liable jointly and severally with the drawer and indorsers, unless the parties otherwise agree.

An *aval* can be given after maturity.

CHAPTER X.

OF PAYMENT.

1. *In what currency a bill must be paid, and hereon of legal tender.*

2. *Effect of paying bill before maturity.*

3. *Effect of payment at maturity.*

4. *Holder not compellable to accept payment before maturity.*

5. *When payment on a second or third of exchange valid.*

6. *Effect of above when bill bearing acceptance not retired.*

7. *Of lost, stolen, and forged bills.*

8. *Remedy of owner of lost unaccepted bill.*

9. *Of proceedings in case of lost accepted bill.*

10. *Proceedings to obtain judge's order for payment of lost bill, and mode of proof, and hereon of traders' books.*

11. *Of a deed of protestation. Difference between same and deed of protest.*

12. *Measures to be adopted by owner of lost bill to procure a second called “deuxième de change.”*

13. *Duration of security mentioned in Arts. 151 and 152.*

14. *Effect of payments made on account of a bill.*

15. *Power of Courts to give time for payment of bills of exchange.*

Art. 143.—A bill of exchange must be paid in the currency indicated thereon (Art. 187.)

It would seem, however, that a bill of exchange drawn in Pounds sterling in London upon Paris can be paid in the equivalent in French money. The construction of the above Article depends upon the circumstances, and it may be taken as a general rule that payment may be made in the currency of the country in which the instrument is payable.

Currency in which a bill is payable.

In default of stipulation to the contrary, the bill must be paid in the currency of the time and place of payment; thus a bill payable in France must be paid in French gold or silver.

Five francs is the limit allowable to be paid in bronze coinage (decree of 12th August, 1810), and 50 francs for silver pieces of 20 centimes, 50 centimes, 1 franc and 2 francs. (Law of 25th May, 1864, Art. 2, and Law of 14th July, 1866, Art. 1 and 5.)

Limits of amounts in bronze and silver coin.

A bill formerly could not be paid in banknotes without the consent of the holder (1805), but at the present time the holder must accept payment in notes if required. (Law of 12th August, 1870).

Bank notes a legal tender.

The drawee, upon payment of a bill of exchange, should demand that the bill be handed to him with the receipt of the holder indorsed thereon.

Should he not demand delivery of the bill, he would be liable if the holder put it into circulation. The drawee should insist upon the *receipt* apart from the delivery of the bill, as he thus is assured of the identity of the holder, since the party presenting the bill is under the necessity of committing forgery should he be a fraudulent holder. In other ways also possession of the bill alone is not sufficient evidence of payment, as bills are often delivered into the possession of the drawee for acceptance, as also for verification before payment (*vide infra*, notes to Art. 145).

Necessity for receipt on payment of the bill.

Art. 144.—A party paying a bill of exchange before maturity is responsible for the validity of such payment (Arts. 129, 146, 161).

Payment before maturity.

This arises (Art. 144) where the holder is unknown to the acceptor, and the latter has not time to verify his quality or identity, as the bill must be immediately paid under penalty

Liability of acceptor after payment.

of protest. This rule applies in the cases of the holder being bankrupt or being a fraudulent holder, or where the indorsement or receipt is forged. But the acceptor is only *presumably discharged*. He will be held liable if it can be proved that he had notice of the incapacity of the holder or the illegality of his possession of the bill, or if he could have ascertained the same by verification of the indorsements and making the pretended holder sign a receipt, or where a valid attachment had been duly served upon him.

Forged
indorsement.

In all the above cases the acceptor should refuse payment, as a holder, through a forged indorsement, though *bonâ fide* cannot sue on the bill.

Parties liable
under a forged
indorsement.

The holder and all the indorsers subsequently to the forgery will have recourse against each other in their turn to recover the amount of a bill improperly paid by them, up to the indorser who received the bill from the forger. The indorser in question can only exercise his remedy against the forger.

Bankrupt
drawee.

A drawee who becomes bankrupt cannot legally pay a bill of exchange, as he has been deprived by the adjudication of the administration of his property, and of the exercise of his rights.

Payment before
adjudication in
bankruptcy.

If, however, the drawee is simply in a state of insolvency, having ceased his payments, without the *date* of cessation having been judicially decided by the Bankruptcy Court, payment by him of bills is valid, and the holder cannot be called upon to refund the amount received to the trustee or syndic of the bankruptcy.

Payment
without notice
of opposition.

Art. 145.—A party who pays a bill of exchange at maturity and without receiving notice of opposition to the payment is presumed to be legally discharged (Arts. 129, 149, 161).

Art. 146.—The holder of a bill of exchange cannot be compelled to accept payment thereof before maturity.

In the case of a bill of exchange, the holder may have an interest and object in receiving his money at the period and place named therein for payment.

There occurs one exception, however (*see ante*, Art. 120). In default of acceptance an indorser may immediately pay the bill, to avoid giving security.

Payment of one
copy of a bill
drawn in sets.

Art. 147.—The payment of a bill of exchange

made upon a second, third, or fourth of exchange, &c., is valid when the second, third, fourth, &c., state that the payment thereof annuls the others (Arts. 110, 148).

Art. 148.—The party who pays a bill of exchange on a second, third, fourth, &c., without retiring the bill upon which his acceptance appears, is not discharged as regards the holder of such acceptance (Arts. 110, 121). Withdrawal of bill by acceptor.

Art. 149.—Opposition to payment of a bill of exchange is admissible only in the case of the bill being lost or the bankruptcy of the holder (Arts. 143, 150).

The drawee cannot pay when *oppositions* have been served upon him, viz., when he has been served with notice in the prescribed French legal form not to pay. Oppositions.

The law recognises two cases in which such an *opposition* can be lodged—1. The loss of the bill. 2. The bankruptcy of the holder. When they may be lodged.

Let us examine these hypotheses—

1. *Case of loss of the bill.*—When a bill of exchange is lost or mislaid, the first care of the holder should be to lodge an *opposition* in the hands of the holder. (This is done by applying to a *huissier*, who will draw up and serve the necessary document, previous to which a judge's order must be obtained.) This will prevent the finder, if dishonest, from receiving payment upon presentation of the bill at maturity. Lost bill.

2. *Bankruptcy of the holder.*—When a holder of a bill is adjudicated bankrupt, and the trustee (*syndic*) is advised that the bankrupt is the holder of a bill not yet matured, he should proceed at once to lodge an “*opposition*” with the drawee, otherwise the latter, upon paying the bill without notice to the holder, would be discharged. Bankruptcy of holder.

If by chance the acceptor had already paid the bill before maturity, he would, as explained *ante* (Art. 144), be compelled to pay the amount over again. (See also Arts. 150, 151, 152 and 153, and notes.)

We may examine in this place the cases of forgery applicable to bills of exchange and the consequences resulting therefrom. The following acts constitute forgery:—
(1.) Fraudulently counterfeiting the signature of an existing Forgery, what constitutes it.

person as drawer. (2.) Signing a bill of exchange with an imaginary name. (3.) Fraudulently causing a bill to be drawn to one's order with the intention of negotiating the same. (4.) Fraudulent alteration of the amount payable in a genuine bill. (5.) Affixing an acceptance upon a bill followed by the forged signature of the drawee. (6.) The fraudulent personification of the holder of a lost or stolen bill. (7.) The negotiation by means of a forged indorsement of a lost or stolen bill.

Drawer's signature forged.

Of forgery in the drawing of a bill.—The drawee is not compelled to pay a bill that he has not accepted, but in case of acceptance of a forged bill he must pay a *bonâ fide* holder for value.

Forged acceptance.

Of forgery in the acceptance.—The drawee having never accepted need not pay. The holder for valuable consideration has only rights against the drawer and preceding indorsers.

Alteration of amount.

Of the forged alteration of the amount of the bill.—We must distinguish whether the alteration took place before or after acceptance. In the first case the drawee who has accepted must pay the bill to a *bonâ fide* holder, but he, the acceptor, can exercise his remedy against the drawer if he issued the bill with the clause *sans autre avis* (without further advice), and thus deprived the drawee of the means of verification, or if the drawer negligently inserted the amount payable in figures instead of words.

In the second case, the drawee is only compelled to pay the sum for which he originally accepted the bill.

Forged indorsement.

Of a forged indorsement.—We must distinguish the case of a forgery being committed by a party who has stolen the bill, and the case of a party who, in order to indorse in his turn, has filled in a blank indorsement by fraudulently writing the name of another person.

Drawee discharged if no opposition lodged.

In the first case the drawee is discharged by payment of the bill to the holder, provided he has not received an "opposition" from the genuine holder of the bill.

In the second case, the drawee who pays the amount of the bill to the holder is validly discharged; but if he becomes bankrupt, the holder cannot have recourse against the person whose name has been fraudulently used to fill in the blank indorsement. He can only proceed against the drawer and the prior indorsers.

The above rules apply equally to the acceptor by inter-

vention and to the persons designated to accept *au besoin* (in case of need) who have accepted the bill.

Art. 150.—In the case of loss of a bill of exchange ^{Unaccepted bill lost,} unaccepted, the party to whom it belongs can sue for payment on a second, third, fourth, &c.

Art. 151.—If an acceptance be written upon a bill of exchange which is lost, ^{Proceedings by order of a judge.} proceedings for payment upon a second, third, fourth, &c., cannot be instituted without a judge's order and after giving security.

The President of the Tribunal will fix the amount of security.

If there has been no acceptance, and a second bill has been created, the law does not require security to be given, as the drawee can always refuse to pay upon the last bill.

In the case of a bill having been drawn in sets, one of which ^{Bills drawn in sets.} has been accepted by the drawee, the latter can refuse to pay should one of the *unaccepted* copies be presented to him, as he would remain liable to the holder of the accepted bill. The owner of a lost bill, in order to obtain payment of a second or third, must obtain a judge's order, and furnish security to indemnify the drawee in the event of his being sued on the accepted bill. Such security endures for three years only. (See Art. 155.)

Art. 152.—If the party having lost the bill of exchange, ^{Proof in respect of lost bill.} whether accepted or not, cannot produce the second, third, fourth, &c., he can demand payment of the lost bill, and obtain same by a judge's order, upon proving his title thereto by his books, and upon giving security (Arts. 8, 12, 109, 155).

He cannot prove his title by his correspondence alone. ^{Evidence of trader's books.} This has been expressly provided, as it is held that the holder should keep his books correctly. As regards a non-trader, however, the above rule would not prevail. The right of the applicant is adjudicated upon by the President of the Tribunal.

Art. 8 of the Code of Commerce obliges every trader to keep a journal, in which daily entries must be made of his receipts and payments, of dealings in his business, and of his negotiations, acceptances, and indorsements of bills; entries must also be made month by month of his housekeeping ^{Code of Commerce, Art. 8.}

expenses. This journal must be kept independently of other trade books customary in commerce. A trader must also file all letters he receives, and take press copies of all letters he sends.

Art. 9.

By Art. 9 of the same code he must draw up every year an inventory of his realty and personalty, and of his assets and liabilities, and this inventory must be copied every year into a special register kept for the purpose.

Traders must preserve their books for a period of 10 years.

Business books properly kept can be admitted by the judges as evidence between traders in relation to *actes de commerce*.

Penalties for non-compliance.

A trader who makes default in compliance with the above enactments cannot produce his books as evidence in a Court of justice in favour of himself, and he renders himself also liable to the penalties attaching to fraudulent bankrupts should he suspend payment, viz., imprisonment from one month to two years. (*See Art. 586 of the Code of Commerce.*)

Art. 153.—In the event of payment being refused upon demand made pursuant to the two preceding sections, the owner of the lost bill preserves all his rights thereunder by making an act of protest.

Protest.

This formality must be complied with upon the day following the maturity of the lost bill.

Notice.

The protest must be notified to the drawer and indorsers in the forms and within the time specified hereafter for the notification of protests.

The deed of protestation differs from a protest, inasmuch as a copy of the bill does not appear thereon. It is impossible for it to appear, as the bill is lost.

Art. 154.—The owner of the missing bill should, to procure the second, apply to his immediate indorser, who is bound to lend him his name and services to proceed against his own indorser; and so on through all the indorsers up to the drawer. The owner of the missing bill bears all the costs of the above.

Necessary steps to obtain payment, when one bill is lost.

He retraces the line of indorsements with the aid of the indorsers. He must pay the expenses attendant thereon, as the bill was lost through his default. He should obtain a fresh bill from the drawer, called *deuxième de change*, containing a statement that payment thereof annuls the previous bill. He

will then re-establish the indorsements, and the drawee can then safely pay the bill (Art. 147). In the event of the first bill having been accepted by the drawee, the holder must indemnify him in case he should be compelled to pay the same (*vide infra*).

Art. 155.—The obligation of giving security, Security, mentioned in Arts. 151 and 152, becomes inoperative after three years, if, in the meantime, proceedings have not been instituted (Arts. 189).

The acceptor nevertheless remains liable to be sued on the bill for five years, but practically it has been found that there Statute of limitations. is little danger after the expiration of three years.

Art. 156.—Payments made on account of the Payment on account. amount of a bill of exchange relieve the drawer and indorsers *pro tanto*.

The law is unsettled as to whether the holder is compelled Part payment. to accept partial payment.

The holder must protest the bill for any surplus due.

Art. 157.—The Courts cannot give time for payment of a bill of exchange.

In practice, this Article is not acted upon in Paris, as in the case of bills the judges give the debtor twenty-five days to Time for payment granted by the Courts. pay, with the consent of the creditor. The defendant, by defending an action, could always gain the same delay.

CHAPTER XI.

OF PAYMENT BY INTERVENTION.

1. *Payment by intervention takes place after protest only.*
2. *Position of party paying by intervention and effects thereof.*

Art. 158.—A protested bill of exchange can be Protested bill. paid by any person intervening for the drawer or one of the indorsers.

The intervention and the payment must be stated either in or at the end of the deed of protest.

Payment by intervention is also called *paiement sous protêt* Payment for honour after protest. or *par honneur*.*

* For honour.

Payment by intervention can only take place after protest. The party thus paying a bill should clearly state for whom he paid it in order to secure his remedy against him. (*See notes to Art. 126, supra.*)

May be made for any party to the bill.

Payment by intervention can take place, not only for the drawer or for one of the indorsers pursuant to Art. 158, but also for the acceptor, for the *donneur d'aval*, in a word, for any of the parties liable on the bill.

Formalities.

The intervention and payment are set out in or following the protest, thus: a third person presents himself and offers to pay the bill for the honour of one of the parties; the *huissier* inscribes a note of such intervention in the document as above, receives payment from the intervener, and hands him the bill.

Position of party paying by intervention.

Art. 159.—A party paying a bill of exchange by intervention stands in the same position as the holder before payment, and must go through the same formalities.

On account of drawer.

If payment by intervention be made on account of the drawer, all the indorsers are discharged.

On account of indorser.

If it be made on account of an indorser, the subsequent indorsers are discharged.

If several parties present themselves to accept by intervention, the party operating the greatest number of "liberations" will be preferred.

If the party upon whom the bill was originally drawn and against whom the bill has been protested for non-acceptance, desires to pay the bill, he is preferred to the others.

A person intervening for all the parties on a bill will be preferred to a party accepting for one of the indorsers only.

Rights of intervening party.

The party paying by intervention is legally substituted for the holder as above. This provision is inserted to encourage the payment of bills of exchange. (*See notes to Art. 126, supra.*)

What interventions preferred.

A party intervening for the drawer is preferred to one intervening for the first indorser, and one intervening for the latter to the intervener on behalf of the second indorser, and so on.

If several persons offer to pay for the same indorser, the first shall be chosen, unless the indorser has specially named one of them to pay for him.

A party paying a bill by intervention is not bound, as an acceptor by intervention, to notify without delay his intervention to the person in whose favour he intervened.

No notice required from intervening party.

CHAPTER XII.

OF THE RIGHTS AND OBLIGATIONS OF THE HOLDER.

1. *Of foreign and inland bills, time for enforcing payment or acceptance, penalties.*

2. *Obligation of holder to enforce payment at maturity, and reasons thereof.*

3. *Of protest.*

4. *Effect of bankruptcy, or death of drawee, on protest.*

5. *Rights of holder of protested bill.*

6. *Of notification of the protest and action upon the bill.*

7. *Actions upon bills payable abroad against parties thereto in France.*

8. *Remedies of holder against drawer and indorsers collectively.*

9. *Cases in which holder is deprived of his rights.*

10. *Cases in which indorsers are deprived of their rights.*

11. *Effect of existence of provision at maturity upon the rights of the parties.*

12. *Rights of holder against parties receiving funds in payment of bill after expiration of certain periods.*

13. *Holder of protested bill may attach personalty of the drawer, acceptor, and indorsers.*

Art. 160.—The holder of a bill of exchange drawn upon the continent or islands of Europe or Algeria, and payable within the European possessions of France or in Algeria, either at sight, or at one or several days or months or usances after sight, must enforce payment or acceptance within six months from the date, under the penalty of losing his recourse against the indorsers, and even against the drawer, should the latter have furnished provision.

Bills drawn on French possessions in foreign countries and reciprocally.

The delay is four months for bills of exchange drawn in the States of the littoral of the Mediterranean, and of the littoral of the Black Sea, upon the

Time allowed.

Time allowed. **European possessions of France, and reciprocally in the continent and islands of Europe upon the French establishments in the Mediterranean and Black Seas. The delay is six months for bills of exchange drawn in the States of Africa beyond the Cape of Good Hope, and the islands of America beyond Cape Horn, upon the European possessions of France; and reciprocally in the continents and islands of Europe, upon the French establishments or possessions in the States of Africa beyond the Cape of Good Hope, and in the States of America beyond Cape Horn. The delay is one year for bills of exchange drawn in any other part of the world, upon the European possessions of France, and reciprocally in the continent and islands of Europe, upon the French possessions and establishments in any other part of the world. The same consequences apply to the holder of a bill of exchange payable at sight, at one or several days, months, or usances after sight, drawn in France, or in the French establishments or possessions, and payable in foreign parts, unless he enforces payment or acceptance within the times above mentioned for each of the distances respectively. The above periods are doubled in case of maritime war. The above provisions do not prejudice any stipulations to the contrary that may be agreed upon between the holder and the drawer, and even the indorsers.**

Art. 160 has been twice modified since the Code of Commerce was first promulgated in 1808. The first modification took place by the law of 19th March, 1817. The last by the law of 3rd May, 1862. The effect of the Article and the amendments thereof are as above stated.

Art. 161.—The holder of a bill of exchange must enforce payment thereof at maturity.

Effect of not enforcing payment at maturity.

This obligation is not imposed upon him in the interest of the acceptor or maker, as the holder can always sue until barred by the statutes of limitation; but the acceptor can liberate himself if he wishes by paying the amount of the bill into the *Caisses des Dépôts et Consignations*, three days after maturity, and without tendering the same in payment, as the

holder is doubtless unknown to him. The obligation is imposed upon the holder in the interest of the sureties against whom he has recourse. If he fail to protest the day after maturity, he loses his right of action against them (*vide* Art. 168). But he is not bound to present the bill the very day it matures. He will comply with Art. 168 by presenting the bill the day following, and protesting it immediately; but if the acceptor becomes bankrupt in the meantime, it is considered that the holder would forfeit his rights against the indorsers.

Release of
sureties.

Art. 162.—The refusal or default or payment must be stated the day following the maturity by an “acte,” called protest for non-payment (“*protêt faute de paiement*”).

Necessary
formality for
protest.

If this day falls upon a legal holiday, the protest must be made on the day following (Arts. 133, 173, 184).

The last day of maturity belongs entirely to the debtor. A protest then made would be void.

When protest
should be made.

The day following the due date the debtor can pay the bill at the time of protest being made, but to prevent same he must tender, beyond the amount of the bill, the expenses of a summons which precedes the protest. In default the protest is legal.

Art. 163.—The holder is not relieved from making the “protest for non-payment” by the protest for non-acceptance, nor by the death or bankruptcy of the party upon whom the bill was drawn.

Necessity of
protest for non-
payment.

In the case of the bankruptcy of the acceptor before maturity, the holder can protest the bill and proceed against the other parties thereto forthwith (119, 156, 173).

Bankruptcy of
acceptor before
maturity.

In the event of death of the drawee, his representatives can pay the bill. In case of bankruptcy of the drawee, neither he nor his trustees can pay, therefore the utility of the protest is not apparent, but it is the mode pointed out by the law to establish the impossibility of payment. The protest may, however, induce some other party to pay the bill by intervention.

Death or bank-
ruptcy of the
drawee.

A protest for non-acceptance does not discharge the holder from making the protest for non-payment, as the drawee may,

since he refused acceptance, have received the provision from the drawer, and thus have no reason for refusing to pay the bill, or he may for other reasons have changed his mind.

Costs.

When a party liable on a bill refuses to pay, the *huissier* who calls the following day to draw up the protest can proceed to do so, notwithstanding a tender of the amount of the bill, unless such tender be accompanied with the expenses of the copy already prepared, viz., two francs in Paris.

The protest is dispensed with in two cases—viz., *force majeure*, and pursuant to the clause “*retour sans frais*.”

Actions by holder.

Art. 164.—The holder of a bill of exchange protested for want of payment can bring his action against the drawer and each of the indorsers individually, or collectively against the drawer and indorsers.

The same right is accorded to each of the indorsers in regard to the drawer and preceding indorsers (Arts. 140, 153, 165, 172).

Against his indorser.

Art. 165.—If the holder enforces his remedy against the party from whom he received the bill, he must notify the protest to him, and in default of payment must bring his action to obtain judgment within fifteen days after the date of the protest, if the debtor reside within five myriamètres.

Time allowed for action.

This time allowed to a party domiciled beyond five myriamètres from the place in which the bill was payable, is increased by one day for each two and a-half myriamètres exceeding the five myriamètres (Arts. 164, 167, 168, 171).

The holder need not proceed against the *acceptor* within the short periods prescribed for his action against the drawer in certain cases and against the indorsers.

Limit of time for actions on bills payable in foreign countries.

Art. 166.—(Modified by the Law of 3rd May, 1862.) Upon bills of exchange, drawn in France and payable beyond the continental territory of France, in Europe, being protested, the drawers and indorsers residing in France must be sued within the periods hereinafter mentioned:—Within one month for bills payable in Corsica, Algeria, Great Britain, Italy, the Low Countries, and the States or Confederations contained within the frontiers of France; within two

months for bills payable in the other States of Europe, the littoral of the Mediterranean and the Black Sea; five months for bills payable out of Europe, within the Straits of Malacca and the Sunda Islands, and within Cape Horn; and eight months for bills payable beyond the Straits of Malacca and the Sunda Islands, and beyond Cape Horn.

The same periods must be proportionately observed in respect of proceedings against drawers and indorsers residing in French possessions situate beyond Europe.

The above delays are doubled for places beyond the seas in case of maritime war (Arts. 160, 164, 165, 167, 171).

Art. 167.—If the holder exercises his remedy collectively against the indorsers and the drawer, he is entitled, in respect of each of them, to the periods specified in the preceding section. Collective or joint action by holder.

Each of the indorsers has the right to exercise the same remedy, either individually or collectively, within the same periods.

The time commences to run, as regards them, from the date of the citation in the action (Arts. 165, 168, 189).

When the holder, in default of payment, sues the drawer, the latter cannot have recourse against the indorsers, as he is surety for them. When drawer sued by holder.

If an indorser is sued on the bill, he can, when he has paid, sue the drawer and also the indorsers who precede him, as if they were his sureties. He can even sue them before he has paid, and his right to commence proceedings accrues upon being served with the writ himself. When indorser sued.

Art. 168.—After the expiration of the delays above mentioned (viz.: For the presentation of a bill of exchange at sight, or at one or several days or months or usances after sight; for the protest for want of payment, and for the institution of proceedings against the guarantors), the holder of a bill of exchange is deprived of all remedies against the indorsers (Arts. 160, 162, 164, 171). How remedies are lost by holder.

By indorsers,

Art. 169.—The indorsers are also deprived of their rights to sue their immediate indorsers as guarantors, after the periods applicable to them above mentioned.

Art. 170.—The holder and indorsers are in like manner deprived of their rights as against the drawer if the latter can prove that provision existed at the maturity of the bill. In this event the holder can only exercise his remedy against the drawee (115, 160, 171).

When *provision* has been furnished.

The holder of a bill of exchange for which provision has been furnished must protest the same at maturity, or lose his remedy against the drawer, even should the drawee have suspended payment; he can only be released from the necessity of the protest in the event of the bankruptcy of the drawee being actually declared, which would render unavailable the provision in the hands of the drawee.

If no *provision*, rights against drawer remain.

The holder of a bill preserves all his rights against the drawer, although he makes default in protesting at maturity in the event of the drawer being unable to prove that he had provided the drawee with funds to meet the bill.

Funds for payment received by drawer or indorsers,

Art. 171.—The deprivation of the remedies mentioned in the three preceding sections does not apply in the case of the holder of a bill as respects the drawer and indorsers, who, after the expiration of the delays fixed for the protest, the notification thereof, or the citation to judgment, receive in account, set off or otherwise, funds applicable to the payment of the bill of exchange (168).

Attachment.

Art. 172.—Independently of the remedies prescribed for action against the guarantors, the holder of a bill of exchange, protested for non-payment, can, with the leave of a judge, attach the personality of the drawer, acceptors, and indorsers (*Art. 164*).

The operation of this section has been suspended, owing to uncertainty existing as to which tribunal the application for attachment should be made.

CHAPTER XIII.

OF PROTESTS.

1. *By whom protests must be made.*
2. *Form and contents of deed of protest.*
3. *When protest can be dispensed with.*
4. *Obligations and formalities to be complied with by official making protest.*

Art. 173. — (“**Modified by Decree of 23rd of March, 1848, Art. 2.**”)—Protests for non-acceptance or non-payment are made by two notaries, or by one notary and “two witnesses,” or by a “huissier” and “two witnesses.”

By whom protests must be made.

The protest must be made at the domicile or last-known domicile of the party by whom the bill of exchange was payable, also at the domicile of the parties named on the bill to pay the same in case of need, and at the domicile of a third party accepting by intervention. The above must be stated in one deed of protest.

In the event of a false address, the protest is preceded by an “acte de perquisition” (see note).

In case of refusal to pay the bill, the holder must fulfil three obligations :—(1) protest; (2) give notice of the protest, and issue a summons to pay directed to the parties he wishes to sue; (3) in default of payment take legal proceedings (*assignation en justice*).

Duties of holder of bill.

The protest constitutes the legal proof of the refusal to pay or accept the bill. There are two kinds of protest—*protêt faute d'acceptation* and *protêt faute de paiement*. Both are drawn up in the same form, but there is no time fixed for making the protest for want of acceptance.

Value of protest.

The necessity for witnesses was abolished in 1848.

An “acte de perquisition” is the document setting out the measures taken by the official to discover the persons named in the bill (*see Arts. 174, 175, and 176*).

Protests are always made by *huissiers*. *Huissiers* are public functionaries, established in each district to draw up and serve citations, notifications, and *significations*, required for the institution of legal proceedings, and also all documents and writs necessary in the execution of judgments and decrees.

Huissiers.

Payment
au besoin.

If any person is indicated to pay *au besoin* (in case of need), the protest must be made at his domicil, but the holder is not compelled to protest the bill at all the addresses of the *besoins* unless they were originally indicated in the bill. He is not obliged to protest at the domicil of persons indicated as *besoins* by the indorsers.

The protest for non-payment should be made at the domicil of the acceptor by intervention (*see* p. 211).

Contents of the
deed of protest.

Art. 174. — The deed of protest contains a copy of the bill of exchange, the acceptance, the indorsements, and other things appearing thereon, and a summons to pay the amount of the bill. It also states whether the party liable to pay the bill was present or absent, and the reasons assigned for refusal or inability to pay and refusal to accept.

Protests contain: a literal transcription of the bill of exchange, the indorsements and "*recommandations*," viz., the persons indicated (*au besoin*) in case of need to accept or pay the bill in default of the drawee; the transcription of the acceptance, if the protest is made for non-payment; the summons to accept, in the case of a protest for non-acceptance; and the summons to pay, in the case of a protest for non-payment; the refusal to accept or to pay, with the reasons, when given; the signature of the party refusing or his declaration of inability or refusal to sign.

Protest
indispensable.

Art. 175. — No act on the part of the holder of a bill of exchange can dispense with the protest, with the exception of the case provided for by section 150 (*et seq.*), respecting the loss of a bill.

Official copies.

Art. 176. — Notaries and "*huissiers*" are compelled, under pain of costs and damages, to leave exact copies of all protests, and to transcribe the same literally day by day and by order of date in a special register, indexed and paragraphed, and kept in the form prescribed for "*repertoires*."*

The object of this formality is to remedy the inconvenience resulting from the loss of the original of the protest.

* Registers in which all deeds and documents are transcribed by notaries and other *officiers ministériels*.

CHAPTER XIV.

OF RE-EXCHANGE.

1. *Re-exchange, how effected.*
2. "*Retraite*," *what it is.*
3. *Re-exchange, how calculated.*
4. *Retraite accompanied by "compte de retour."*
5. *Explanation of "compte de retour."*
6. *One "compte de retour" only permitted.*
7. *Re-exchanges cannot be made cumulative.*
8. *Of interest upon protested bills.*
9. *Of interest upon expenses of protest, re-exchange, &c.*
10. *Effect of non-compliance with Art. 181.*

Art. 177. — Re-exchange is effected by a "re-
traite" (Arts. 178, 187, 188). Re-exchange
how effected.

The *retraite* is drawn at a short date, to enable the holder, if it be unpaid, to sue within fifteen days from the first protest. Reason for
retraite.

It frequently happens in mercantile dealings, that the holder, instead of exercising his remedy against the drawer and indorsers, draws a fresh bill upon one of them to reimburse himself the amount of principal and expenses owing to him in respect of the first bill.

This operation is called re-exchange, and the bill thus drawn *retraite*. The word *rechange* is also employed to designate the rate of exchange at which the bill is negotiated. It is so used in Arts. 179, 183, 185 and 186. Substituted bill.

The party who draws a *retraite* is not absolved from fulfilling the formalities relating to notification of protest and proceedings to enforce payment within the periods required by law.

The re-exchange is an endeavour to obtain a settlement without recourse to law, and is at the risk and peril of the holder. At holder's risk.

Art. 178. — The "*retraite*" is a fresh bill of exchange, by means of which the holder reimburses himself against the drawer or one of the indorsers, the amount of the principal of the protested bill, with expenses, and the new rate of exchange paid Meaning of the
retraite.

by him (Arts. 110, 140, 181, 184). See chapter on Forms, and Note to Art. 181, *infra*.

Contents of the
retraite.

Art. 178 was modified as follows by the decree of 24th March, 1848, which has not been repealed, and is still applied in practice:—"The *retraite* comprises, with the detailed statement signed by the drawer only, and transcribed upon the back of the instrument, the following:—(1) the amount of the principal of the protested bill; (2) the expenses of protest and notification; (3) the interest since default; (4) loss of exchange; and (5) the stamp, which is fixed at 35 centimes." (See Law of 5th June, 1850; Art. 1, stamps.)

How
re-exchange
is calculated.

Art. 179.—The "rechange" is calculated, as regards the drawer, by the rate of exchange between the place in which the bill of exchange was payable and the place in which it was drawn; and as regards the indorsers, by the rate of exchange between the place in which the bill was negotiated by them and the place of payment (Arts. 72, 76, 181).

Vide note to Art. 181, *infra*.

Expenses.

Art. 180.—The "retraite" is accompanied by an account of expenses of return called "compte de retour." (See chapter on Forms).

Art. 181.—The "compte de retour" comprises the following:—

The amount of the principal of the protested bill; the expenses of protest and other legitimate charges, such as bankers' commission, brokerage, stamps and postage.

It states the name of the party upon whom the "retraite" is made and the rate of exchange at which it is negotiated.

It is certified by an "agent de change," or by two traders in places in which there are no "agents de change."

It is accompanied by the protested bill, the protest, and a copy of the deed of protest.

In the case in which the "retraite" is made upon one of the indorsers, it is also accompanied by a certificate stating the rate of exchange between the

place where the bill was payable and the place in which it was drawn. (See chapter on Forms.)

A decree of 24th March, 1848, modified Arts. 178 and 179 of the *Code de Commerce*, and suspended the execution of Arts. 180, 181, and 186.

The stamp was modified by the law of 5th June, 1850, which subjected *retraites* to the same *ad valorem* stamps as other bills of exchange.

Art. 182.—One “*compte de retour*” only can be made on the same bill of exchange. *Compte de retour* made only once.

This “*compte de retour*” is reimbursed by one indorser to the others respectively, and ultimately by the drawer.

Art. 183.—Re-exchanges cannot be cumulative.

Art. 184.—Interest upon the principal of a bill of exchange, protested in default of payment, is payable from the date of the protest (162, 173, 185, 187). Interest upon the amount of the bill.

But interest upon the expenses of protest and other legitimate charges can only be claimed from the date of issuing the writ.

Art. 185.—Interest upon the expenses of protest, re-exchange, and other legitimate costs, is payable from the date of the commencement of the action for payment of the bill. Interest upon expenses, &c.

If the protest be dispensed with, the interest upon the principal is calculated from the date of maturity, but the interest upon the expenses, such as bankers' commission, brokerage, stamps and postage, is allowed only from the date of the *assignation* or writ.

The usual mode of recovering the above charges without litigation is by means of a fresh bill drawn by the holder, the consideration being expressed as follows:—*Valeur en remboursement de l'effet ci-joint non-payé* (in reimbursement of the unpaid bill of exchange annexed). This bill is a *retraite*. (See Art. 178.)

Art. 186.—(Suspended provisionally by decree of 24th March, 1848.) No re-exchange is payable unless the “*compte de retour*” is accompanied by certificates of stockbrokers or traders, as prescribed by Art. 181. Necessary certificates.

CHAPTER XV.

OF THE "BILLET-À-ORDRE" (PROMISSORY NOTE).

1. *Provisions relating to bills of exchange, when applicable to "billet-à-ordre."*

2. *Requisites of "billet-à-ordre."*

Provisions
which apply to
promissory
notes.

Art. 187.—All the provisions of the Code of Commerce relating to bills of exchange, viz. :—

Maturity (c. 110),
Indorsement (136),
Joint and several liability (140),
Sureties (141, 142),
Payment (143, 155, 156),
Payment by intervention (158),
Protest (160),
Duties and rights of the holder (173),
Ré-exchange and interest (177),

are applicable to "billets-à-ordre," without prejudice to the provisions contained in Arts. 636, 637, and 638 (189).

Special provisions.
Jurisdiction.

636. In the case in which bills of exchange are considered as simple promises only, by the terms of Art. 112, or when promissory notes bear the signatures of non-traders only, or have not been made in relation to commercial operations, exchange, banking, or commission, the Tribunal of Commerce must refer such cases to the Civil Courts, if so required by the defendant.

637. When such bills of exchange and promissory notes bear at the same time signatures of traders and of non-traders, the Tribunal of Commerce has jurisdiction, but it cannot order the arrest of individuals not being traders, unless they enter into engagements in relation to commercial acts, exchange, banking or commission (latter part repealed by law abolishing *contrainte par corps*).

Suits not within
the jurisdiction
of the Tribunal
of Commerce.

638. The following are not within the jurisdiction of the Tribunals of Commerce :—Actions against a landowner, agriculturist, or wine grower for the sale of produce arising from the soil cultivated by him; actions against traders for payment for produce and goods bought for their private use.

Nevertheless, bills of exchange given by a trader are presumed to be given in relation to his business, and those of receivers, paymasters, or other public Government accountants are presumed to be given in relation to their official capacity, unless the contrary appear upon the documents themselves.

The *billet-à-ordre* is a written document, by which a person promises to pay to another, or to his order, a certain sum. It differs from a bill of exchange as follows:—The parties to a *billet-à-ordre* consist of two instead of three, viz., the maker and the payee; the maker unites, in his person, the two capacities of drawer and drawee, therefore no question of acceptance or provision can arise. The *billet-à-ordre* is not necessarily *commercial*, it can be purely civil. It depends whether the instrument was created in execution of an act of commerce or otherwise. If the note be made by a trader, the code establishes a presumption of commerce. (Art. 638, Code of Commerce.)

Art. 188.—The “*billet-à-ordre*” is dated. It states the amount payable, the name of the party to whose order it is made, and the period when payment must take place. It also states whether value received has been in cash, merchandise, in account, or otherwise (Arts. 110, 636).

The maker should add his profession to his signature. If he does not himself fill in the body of the instrument, he should write in words at the foot of the bill the amount for which he signs the same, thus:—*Bon pour mille francs*. (See chapter on Forms of Negotiable Instruments.)

Should any of the above particulars be omitted, for instance, the date or the consideration, the instrument might still constitute a civil or a mercantile obligation, but it would not be what the law terms a *billet-à-ordre*.

It has been decided by the Court of Cassation, that when the “value received” is not described, the maker can plead the same defences against an indorser as against the payee (14th August, 1850).

A *billet-à-ordre* is not, like a bill of exchange, *per se*, an act of commerce. It is only deemed to be so when it relates to an actual or presumed operation of trade.

CHAPTER XVI.

OF PRESCRIPTION (LIMITATION OF ACTIONS.)

Of prescription generally, in relation to negotiable instruments.

Limitation of
actions,

Art. 189.—All actions relating to bills of exchange and to “*billets-à-ordre*” subscribed by merchants, traders or bankers, or for acts of commerce, are barred after five years from the date of the protest or of the last judicial proceeding, if judgment has not been obtained, or if the debt has not been recognised by a separate deed.

Nevertheless, the defendants are compelled, if required, to affirm, under oath, that they are not indebted as alleged; and their widows, heirs and representatives must in like manner swear that to the best of their belief nothing is owing (Arts. 110, 187).

When judgment
obtained.

All actions relating to bills of exchange, *billets-à-ordre* made by traders, and *billets-à-ordre* by non-traders in relation to acts of commerce, are barred after five years. Time runs from the date of the protest, or of the last judicial proceeding, and if there has been no protest, from the date when the same should have been made. If the creditor has obtained a judgment or an admission of the debt by a separate deed, his action will not be barred until thirty years thereafter.

Non-traders.

Actions upon *billets-à-ordre* subscribed by non-traders, in respect of dealings not being commercial, are not barred until thirty years, notwithstanding that the maker be amenable to the jurisdiction of the Tribunal of Commerce, from the fact of the signatures of traders appearing upon the instrument.

Declaration
required
if statute
pleaded.

Debtors who plead the statute of five years in actions upon bills of exchange or *billets-à-ordre*, are obliged, if required, to declare upon oath that they do not owe the money claimed, and their partners or representatives must also swear that to the best of their knowledge and belief nothing is owing.

Although the Code of Commerce does not reproduce these terms, Art. 189 demonstrates sufficiently that the nature of such prescription is in no wise changed, inasmuch as it provides that, notwithstanding the expiry of the period stated, the

debtors are obliged, if called upon, to state upon oath that they do not owe the amount of the bill, and their widows, heirs, and representatives must swear that to the best of their belief nothing is due. In case of refusal, they are not permitted to benefit by the plea of the statute of limitations (prescription).

In other descriptions of actions, where the prescription of 30 years is pleaded, the defendants are not required to take the oaths as above. The defence, if established, is an absolute bar. (See chapter on Prescription generally). The prescription of five years is applicable to promissory notes (*billets-à-ordre*) in two cases only, viz., when they are subscribed by traders, or by non-traders in relation to acts of commerce.

The prescription of five years was unknown prior to 1673. At this period actions upon bills of exchange were not barred until after 30 years, the same as those relating to other commercial obligations. Abuses, however, crept in, and ultimately Art. 21 of Title v. of the *Ordonnance* of 1673, enacted that "bills of exchange should be *presumed* to be paid after five years from the cessation of demands and proceedings, reckoning from the day following maturity, or from the protest, or from the last proceedings."

Acting upon the same principles, the authors of the Code of Commerce confirmed the prescription of five years and considerably extended its application, as will be explained.

The object of the legislation in fixing certain limitations of actions or prescriptions, has been to secure debtors from the proceedings of negligent creditors, who are deprived of their rights to sue in consequence of not exercising them within the legal periods.

The prescription of five years, relating to bills of exchange, is of another nature. Such prescription affords but a *presumption* of payment. (See above *Ordonnance*).

A protest is not necessary in order that the statute may commence to run. The law does not say that the prescription shall run from the protest, but from the *day* of the protest. Thus the Court of Cassation has decided that when no protest has been made, the statute runs from the date when the protest should have been drawn up, viz., the day after maturity (23rd April, 1846).

If one of the parties to a bill is sued, and final judgment signed, the prescription is enlarged to 30 years so far as regards the defendant in question, but the prescription of five years still applies to those not proceeded against.

Thirty years an absolute bar.

Origin of five years' prescription.

Object of this legislation.

When no protest actually made.

CHAPTER XVII.

OF CHEQUES AND FORMALITIES REQUISITE THERETO.

Bills of exchange and cheques, although possessing many points in common, differ materially from each other. A bill of exchange creates a promise to pay or an undertaking that a third party shall pay.

Cheques.

A cheque is a payment in paper in lieu of cash, and simply expresses the existence of a fund belonging to the drawer, and indicates to the drawee the amount payable to him.

The law of 14th June, 1865, treats of the difference between bills of exchange and cheques.

A cheque is the instrument used in the service of current accounts.

A cheque should be considered as a mode of payment only; if it became an instrument of credit it would lose its characteristics, and infringe upon the provisions of the stamp laws.

Stamp duties.

In order to encourage the custom of opening current accounts and the employment of cheques, it was considered expedient to remove the obstacles thereto which were occasioned by the stamp laws. A cheque being a writing, serving to effectuate and prove the withdrawal on behalf of the depositor or of a third party, of funds deposited in current account when the withdrawal took place by means of a cheque-receipt (*récépissé*), this cheque-receipt was subject to a fixed stamp duty of 50 centimes; when it took place by a draft (*mandat*), the draft was subject to an *ad valorem* stamp of 50 centimes per 1,000 fs.

Fixed at
10 centimes.

The law of 14th June, 1865, exempted cheques from all stamp duties during 10 years, but this law was repealed by the law of the 23rd of August, 1871, which fixed a stamp duty of 10 centimes upon all cheques.

Object of the
legislation.

The law of the 14th of June, 1865, was enacted with a twofold object, first to attribute to cheques the advantages necessary to develop the custom of deposits in current account; secondly, to define the nature and effects of cheques with sufficient precision to prevent their usurping or being confounded with the privileges of other instruments of credit.

Definition.

A cheque is a writing which, under the form of an order for payment, enables the drawer to obtain a withdrawal for his

own benefit or for the benefit of a third party of the whole or a part of the moneys standing to the credit of his account in the hands of the drawee.

It must be signed by the drawer and bear the date of the day upon which it is drawn. The date must be written in full, and by the person who fills up the cheque. (See the law of 19th February, 1874.) Signature—
date.

It can only be drawn at sight.

It can be made payable to bearer or to the party named To bearer. thereon. A cheque payable even to bearer must be indorsed upon presentation by the holder.

It can be drawn payable to order, and transferred even by To order. blank indorsement.

If a cheque be made payable at one or several days after sight, it cannot be distinguished from a bill of exchange.

The indorsement of a cheque permits the payee named therein to pay the same into his own bankers, and thus dispense with the inconvenience to which he would be subjected by being obliged to receive payment personally.

The indorsement is also indispensable for cheques drawn from one place upon another, and transmitted by post.

The drawer of a cheque need not state the nature of the value received.

A cheque can only be drawn upon a third party previously holding provision, and is payable upon presentation..

A cheque can be drawn from one place upon another or upon the same place.

Cross cheques have not yet come into general use in France.

The issuing of a cheque, even when drawn from one place upon another, does not necessarily constitute an act of commerce; the provisions of the Code of Commerce, however, respecting the joint and several liability of the drawer and indorsers, the protest, and the rights of action in relation to bills of exchange, are applicable to cheques. What
provisions
apply to
cheques.

A cheque must be considered an act of commerce or a civil act, according to the capacities and qualities of the parties and the reasons for which the instrument was created.

The holder of a cheque must present the same for payment within five days, including the date thereof, if the cheque be drawn in the place in which it is payable, and within eight days, including the date thereof, if it be drawn elsewhere. Time for
presentation.

The holder who fails to claim payment within the periods Effect of non-
presentation.

above mentioned loses his recourse against the indorsers; he also loses his recourse against the drawer if the provision has failed by the default of the banker after the above delays.

The negligence of the holder must not prolong indefinitely the guarantee of the indorsers nor compromise the drawer, which would otherwise happen in the case of the disappearance of the provision through the insolvency of the bank.

Penalties.

A drawer who issues a cheque without date, or with a false date, is liable to a penalty of 6 per cent. of the amount thereof.

No account.

The issuing of a cheque without provision previously existing to meet it subjects the drawer to the same penalty, without prejudice to the application of the penal laws.

Cheques drawn and payable in the same place are subject to a stamp duty of 10 centimes. (Law, 23rd August, 1871, Art. 18.)

The law of 19th February, 1874, doubled the stamp duty upon cheques drawn from one place upon another.

The penalties comprised in Arts. 4, 5, 6, 7 and 8 of the law of 5th June, 1850, are applicable to unstamped cheques drawn from one place upon another. (*Vide* Appendix, p. 47.)

Cheques drawn upon plain unstamped paper, and payable in the same place, subject the drawer to a penalty of 50 fs.

Impressed and adhesive stamps.

The forms of cheques drawn in France must be stamped *à l'extraordinaire* (Law of 23rd August, 1871, Art. 18), viz., adhesive stamps may not be employed, but in the case of cheques drawn from one place upon another the drawer may affix an adhesive stamp of 10 centimes upon the form already stamped with the impressed stamp. The adhesive stamp must be cancelled at the time of employment.

Clearing-house.

The use of cheques is gaining ground in France, and a clearing-house has been established in Paris, and has been in operation since 1872.

(For special information as to cheques, see the texts of the Laws of 14th June, 1865, and 19th February, 1874, *infra*, pp. 50, 52.)

CHAPTER XVIII.

OF A "BILLET SIMPLE."

A *billet simple* is an instrument payable to the party in *Billet simple*, whose favour it is drawn only; the payee cannot indorse or negotiate it except by a special deed of transfer called an *acte authentique*, notice of which must be given to the debtor and acquiesced in by him.

A *billet simple* should be written entirely by the maker, or if the body thereof be filled in by another person, the maker must add to his signature an approbation called a *bon ou approuvé*, and state in words the amount of the bill. (See chapter on Forms.)

The prescription of thirty years is applicable to *billets simple*, although it be made between traders and in relation to commercial dealings. (See chapter on Limitation of Actions.)

CHAPTER XIX.

OF STAMP AND REGISTRATION DUTIES AND PENALTIES FOR INFRINGEMENT THEREOF.

In the case of bills drawn in sets, the first only need be stamped. (Law 1850, Art. 10.)

Duty is payable, not only upon bills drawn in and upon France, but also for bills drawn in France upon foreign parts and from abroad upon France. (Law 1850, Arts. 3 and 9.) The latter duties are paid by means of adhesive stamps, which must be affixed before the bills can circulate in France. (Law of 11th June, 1850.)

As regards bills drawn in and upon foreign countries, and circulating in France, no stamp duties were payable thereon in 1850; but the law of 1871 subjected the same to the duties therein specified.

The penalties for non-compliance with the above provisions are still the same as are contained in the law of 1850, viz., in the first place a penalty of 6 per cent. of the amount of the bill against the drawer, the holder, and the acceptor. (Art. 4, see *infra*.) They are jointly and severally liable,

irrespective of the above penalties, which may amount to 18 per cent. (Art. 6.) All persons dealing with an unstamped bill are liable to a penalty of 6 per cent. (Art. 7.)

No stamp is required upon a receipt given on payment of a bill of exchange.

The Law of 19th February, 1874, enacts that the following instruments are subject to the same stamp duties as bills of exchange, viz. bills, obligations, assignments, and all unnegotiable instruments, whatever may be their form or denomination, which serve to transfer funds from one place to another. The object of this clause was to suppress frauds arising from the use of documents dealing with large amounts drawn up with the same objects as a bill of exchange or *billet-à-ordre*, but not embodying the essential conditions thereof.

The following are examples :—

An unnegotiable bill would be drawn thus:—I will pay to [without adding, “or his order”]; an unnegotiable obligation runs thus:—*Received from* or, I acknowledge having received from; an unnegotiable assignment thus:—Please hold at the disposition of against his receipt; lastly, an unnegotiable instrument thus:—Please pay to [without adding “or his order”].

All documents drawn up with the above objects, whatever may be their form, are subject to the prescribed stamp duties.

Letters of credit do not come within the above category, nor do invoices sent for collection by a trader from one place to another.

Bills of exchange and negotiable instruments must be registered in France before proceedings can be instituted against any of the parties to enforce payment thereof. The *ad valorem* duty is 50 centimes per 100 fs. (Law of 28th February, 1872, Art. 10.) Bills and notes must be presented for registration at the Bureau de l'Enregistrement, with the protests annexed.

The *billet-à-ordre* is subject to the same *ad valorem* stamp as a bill of exchange, by the Law of 5th June, 1850, Art. 1. (*Vide* translations of above laws, *infra*.)

CHAPTER XX.

JURISDICTION OF THE COURTS,

1. *Bills primâ facie subject to jurisdiction of Tribunal of Commerce.*

2. *Non-traders, Courts in which they can be sued.*

3. *Of the administration of justice in France and hereon of the Juges de Paix, Tribunaux de Commerce, Tribunaux de Première Instance, Cours d'Appel and Cour de Cassation.*

4. *Of security for costs, and actions upon negotiable instruments in the French Courts.*

1. Bills of exchange are considered, *per se*, as acts of commerce, and subject the parties thereto to the jurisdiction of the Tribunals of Commerce.

Bills of exchange within jurisdiction of Tribunals of Commerce.

Billets-à-ordre signed by traders are, in like manner, acts of commerce, and subject to the jurisdiction of the same tribunals.

Promissory notes by traders.

The case is not the same as regards—

2. Negotiable instruments signed by non-traders; thus, the acceptance of a bill by a non-trader in relation to a commercial dealing subjects him to the jurisdiction of the Tribunal of Commerce. A bill accepted by a non-trader in relation to a civil transaction can be adjudicated upon in the Tribunal of Commerce if signatures of traders appear thereon. The acceptor of a bill for a purely civil consideration can be sued in the Tribunal of Commerce, but he is at liberty to have the action transferred to a civil Court.

Non-traders.

3. Mention may be made in this place of the different tribunals established for the administration of justice in France:—

I. The *Juge de Paix* (Justice of the Peace) is a magistrate nominated in each canton to adjudicate upon unimportant claims and cases.

Justice of the Peace.

II. *Tribunals of Commerce* are established in the most important towns, but the Civil Courts adjudicate upon commercial matters in the places in which a Tribunal of Commerce does not exist. The members of the latter are traders, and are elected by a meeting of merchants of standing in the respective towns convened for the purpose. The jurisdiction of the Tribunals of Commerce comprises all suits

Tribunal of Commerce.

relating to mercantile transactions between traders or non-traders, bankruptcy and other similar matters. Appeals lie to the Court of Appeal of the district. No appeal is allowed unless the claim exceeds 1,500 francs. The officials practising in the Tribunals of Commerce are called *agréés*. They combine the functions of counsel and solicitor.

Tribunals of
First Instance.

III. *Tribunals of First Instance* are established in the chief towns of each *arrondissement*, except in the Department of the Seine, in which there is one tribunal only for the whole department. The above are Civil Courts. The members are judges. The officials conducting cases in the Civil Tribunals are denominated *avoués*. Their duties in a great measure correspond with those of solicitors in England. Counsel, called *avocats*, argue all cases in Court, both in the Tribunals of First Instance and in the Courts of Appeal. The jurisdiction includes all classes of cases not otherwise specifically attributed to other Courts.

Courts of
Appeal.

IV. *Courts of Appeal*, of which there are twenty-six in France, adjudicate upon appeals from judgments of the Courts of First Instance. The time for appealing is within two months.

Court of
Cassation.

V. *Court of Cassation* is the Supreme Court of Appeal in France, and sits in Paris. It decides upon appeals in criminal, police, and civil cases. The Court of Cassation deals solely with questions of *law*. The judgments of the Courts below are final as regards questions of fact. All appeals to the Supreme Court must pass through the *Chambre des Requêtes*, in which they undergo a preliminary examination before being admitted for final adjudication. Appeals to the Court of Cassation in civil cases must take place within two months from receipt of notice of the judgment of the inferior Court.

Procedure in
Tribunals of
Commerce.

The procedure upon bills of exchange is more speedy and less costly in the Tribunal of Commerce than in the Civil Courts. A foreign plaintiff is not called upon to give security for costs in the Tribunal of Commerce in suing a French defendant, but he is liable to furnish such security in a similar action in the other Courts. A foreigner being sued by another foreigner in any French Court cannot compel the plaintiff to give security.

Foreign
plaintiff.

A French acceptor of a bill drawn and payable in England, in the English form, can be sued thereon in France by an English holder upon giving security for costs; but if both

parties are English, the French Courts have no jurisdiction.* In the latter case the holder should sue the English acceptor upon the bill in England and obtain an English judgment, and bring an action in the Civil Court of France to obtain execution of the judgment in France against the English acceptor.

The French Tribunals of First Instance have jurisdiction to enforce foreign judgments in France. As a general rule, a final judgment in England against an English defendant will not be reopened by the French Courts in an action to enforce the same in France, but the Courts, in the case of a foreign judgment having been given against a French defendant, will allow him to put in the same defence as he pleaded to the action abroad, and will practically try the case over again in France.

Foreign judgments can be sued upon in France.

The amount of security for costs ordered to be given in actions in the French Courts is very moderate compared with the practice in England, and the costs of litigation in France is proportionately low, but the costs allowed as between party and party are less favourable to a successful plaintiff than according to the English scale.

Costs.

The Tribunals of Commerce have exclusive jurisdiction in bankruptcy in France, subject to appeal to the Cours d'Appel.

Bankruptcy.

The subjects referred to in this chapter will be found treated at length in other parts of the present treatise (*see Index*).

* The French Courts would, however, adjudicate if either of the parties is domiciled or carries on business in France.

LAWS AND DECREES RELATING TO STAMPS, CHEQUES, AND FOREIGN BILLS OF EX- CHANGE.

BILLS OF EXCHANGE.

5th June, 1850.

Art. 1.—The *ad valorem* stamp duty in force at the present time (1882) upon bills of exchange, promissory notes, and other commercial securities, was fixed as follows:—

| | | | | | |
|---|---|-------------|------------------------------------|---|-----------|
| 5 centimes for bills of 100 francs and above. | | | | | |
| 10 | „ | „ | above 100 francs up to 200 francs. | | |
| 15 | „ | „ | „ 200 | „ | „ 300 „ |
| 20 | „ | „ | „ 300 | „ | „ 400 „ |
| 25 | „ | „ | „ 400 | „ | „ 500 „ |
| 50 | „ | „ | „ 500 | „ | „ 1,000 „ |
| 1 franc | „ | „ | „ 1,000 | „ | „ 2,000 „ |
| 1 | „ | 50 centimes | „ 2,000 | „ | „ 3,000 „ |
| 2 francs | | | „ 3,000 | „ | „ 4,000 „ |

and so on, following the same progression, and without fractions.

Stamping after
execution.

Art. 2.—Any party who receives from the drawer a bill of exchange not stamped in conformity with Art. 1, must cause it to be assessed by the stamp office within 15 days from its date, or before maturity, if the bill be payable within 15 days, and in every case before negotiating the bill. The *visa pour timbre* incurs a tax of 15 centimes per 100 fs., or fraction of 100 fs., in addition to the amount of the bill, notwithstanding any stipulation of the parties to avoid the same.

Foreign bills
unstamped.

Art. 3.—Bills coming from abroad, or from islands or colonies in which the stamping of bills does not exist, and payable in France, must, before being negotiated, accepted, or paid, be stamped, or subjected to *visa pour timbre*, and the amount paid in the proportions fixed by Art. 1.

Penalty.

Art. 4.—In the event of contravention of the preceding Articles, the drawer, acceptor, and first indorser of the unstamped or *non-viséd* bill will be each liable to a penalty of 6 per cent. With regard to bills comprised in Art. 3,

besides the application, if there be cause, of the preceding paragraph, the first of the indorsers residing in France, and in default of indorsement in France, the holder, will be liable to the penalty of 6 per cent. Should the contravention, however, exist in the employment of a lesser stamp than requisite, the penalty will be calculated only upon the deficit in respect of which the stamp duty may not have been paid.

Art. 5.—The holder of an unstamped bill of exchange, or of a bill *non-visé pour timbre*, pursuant to Art. 1, 2, and 3, can only bring an action, in case of non-acceptance, against the *drawer*; in the case of acceptance, he can only proceed against the acceptor and against the drawer, if the latter cannot prove that provision existed at maturity. The holder of any other bill subject to stamp, and being unstamped or *non-visé pour timbre*, in pursuance of the above Articles, has a right to proceed against the acceptor only.

Rights of holder of unstamped bill.

Art. 6.—Parties contravening as above are jointly and severally liable to the payment of the stamp duties and penalties pronounced in Art. 4. The holder must advance the amount of the duties and penalties, reserving his rights to contribution against the other parties, which rights are enforceable in a Court of competent jurisdiction.

Art. 7.—All persons, Companies, and public establishments, are forbidden to receive payment on their own account, or on account of third parties, of unstamped bills of exchange, or of bills *non-visé pour timbre*, under penalty of a fine of 6 per cent. upon the amount so received.

Payment of unstamped bills prohibited.

Art. 8.—Any memorandum or agreement in reference to the return of a bill without expenses, whether appearing upon the face of the bill or a separate document, is null and void if the same relate to bills unstamped or *non-visé pour timbre*.

Art. 9.—The provisions of the present law are applicable to bills of exchange, promissory notes, and other securities made in France and payable in foreign parts.

Art. 10.—The exemption from stamp duty, accorded by Art. 6 of the 1st May, 1822, to duplicates of bills of exchange, is maintained. Nevertheless, if the first stamped or *visé pour timbre* is not joined to the bill put into circulation, and destined to receive the indorsements, the stamp or *visa* should be affixed upon the latter, under the penalties hereinbefore mentioned.

Exemption.

Art. 11.—The provisions contained in the preceding Articles are only applicable to bills drawn subsequent to the 1st October, 1850.

Law of 11th June, 1859.

Adhesive
stamps on
foreign bills.

Art. 19.—The stamp duties applicable, pursuant to Art. 3 of the law of June 5th, 1850, to bills of exchange coming from abroad, or from the islands or colonies in which stamp duties were not then established, can be discharged by affixing such *adhesive* stamps upon the same as are sold or authorised to be sold by the administration of the *enrégistrement*. The form and conditions of employment of such adhesive stamps will be fixed by rules issued by the administration.

Law of 18th January, 1860.

(Decree relating to *adhesive stamps* authorised to be employed by the law of 11th June, 1859, for bills of exchange coming from abroad, or from islands or colonies in which stamp duties had not then been established.)

Art. 1.—Adhesive stamps to be issued in execution of Arts. 19, 20, and 11 of the law of 11th June, 1859, the rates and employment of which are fixed, pursuant to the law of 5th June, 1850, as follows:—

Art. 2.—Adhesive stamps may not be affixed to bills of higher amount than 20,000 fs. These bills will continue to be submitted to the *visa pour timbre*, and be charged at the rate of 50 centimes per 1,000 fs., without fractions, pursuant to Arts. 10 and 11 of the law of 13th brumaire, year VII.*

Art. 3.—The adhesive stamp must be affixed upon the instruments *before* they are used or negotiated in any way in France. It shall be affixed to the bill in the following manner:—Before the indorsements if the bill has not yet been negotiated, and in the event of negotiation, immediately after the last indorsement made abroad.

Cancelling of
stamps.

The party signing an acceptance, guarantee, indorsement, or receipt, must cancel the stamp immediately upon affixing the same by writing his name and the date the stamp was so affixed thereon.

* Repealed by law of 23rd January, 1864. Adhesive stamps can now be affixed to bills of any amount.

CHEQUES.

Law of 14th June, 1865.

Art. 1.—A cheque is a writing which, under the form Cheques.
of an order for payment, enables the drawer to effectuate the withdrawal, for his own benefit, or for the benefit of a third party, of the whole or a part of the funds standing to the credit of his account and disposable in the hands of the drawee. It must be signed by the drawer, and bear the date of the day upon which it was drawn. It can only be drawn at sight. It can be made payable to bearer or to the party named thereon. It can be made payable to order, and is transferable even by a blank indorsement.

Art. 2.—A cheque can be drawn only upon a party There must be
funds with the
drawee.
holding provision previously: it is payable upon presentation.

Art. 3.—A cheque can be drawn from one place upon another, or upon the same place.

Art. 4.—The issuing of a cheque, even when drawn from one place upon another, does not of itself constitute an *acte de commerce*. Nevertheless, the provisions of the Code of Commerce respecting the joint and several liability of the drawer and indorsers, the protest, and the right of action of guarantee, in relation to bills of exchange, apply to cheques.

Art. 5.—The holder of a cheque must demand payment Limit of time
for payment.
thereof within five days from the date of the instrument inclusive, if the cheque be drawn in the place in which it is payable, and within eight days, inclusive of the date thereof, if drawn from another place. The holder of a cheque who fails to claim payment within the above periods loses his remedy against the indorsers; he also loses his remedy against the drawer if the provision disappears through the default of the drawee after the above delays.

Art. 6.—The drawer who issues a cheque without Absence of date,
or false date.
date, or who inserts a false date, is liable to a penalty of 6 per cent. of the amount for which the cheque was drawn. The maker of a cheque without the existence of provision beforehand incurs the same penalty, with possible application of penal laws.

[The above Art. was repealed by Art. 6 of the law of 19th February, 1874.]

Further provisions.

Receipt.

Penalties for fraud in respect of date.

Duty on cheques.

Foreign cheques negotiated in France.

By the law of 19th February, 1874, Art. 5, the following clauses were added to Art. 1 of the law of 14th June, 1865:—The cheque must indicate the place from which it is issued. The date of the day upon which it is drawn must be written in full letters, and by the hand of the person who filled up the cheque. A cheque, even to bearer, must be receipted by the person receiving payment thereof; the receipt must be dated. All stipulations between the drawer, the payee, or the drawee, with the object of rendering a cheque payable otherwise than at sight and upon a first demand, are null and void.

Art. 6.—Art. 6 of the law of 14th June, 1865, was repealed and replaced by the following provisions:—The drawer who issues a cheque without date, or not dated in full, in respect of a cheque drawn from one place upon another; a person who affixes a false date or a false statement of the place in which the cheque was drawn, are liable to a penalty of 6 per cent. of the amount of the cheque, or to a minimum penalty of 100 fs. The same penalty is payable personally and without recourse by the first indorser or the holder of a cheque without date or not dated in full letters, if it be drawn from one place upon another, or if it bears a date posterior to the period at which it is indorsed or presented. The same penalty is also payable by any person who pays, or receives as a set-off, a cheque without date, or irregularly dated, or presented for payment before the date of issue. A person who issues a cheque without previous provision existing is liable to the same penalty, without prejudice to criminal proceedings, should cause be shown.

Art. 7.—A person who pays a cheque without enforcing a receipt is personally liable to a penalty of 50 fs.

Art. 8.—Cheques drawn from one place upon another are subject to a fixed stamp duty of 20 centimes. Cheques drawn and payable in the same place continue to require a 10-centimes stamp. The penal clauses of Arts. 4, 5, 6, 7 and Art. 8 of the law of 5th June, 1850, are applicable to cheques drawn from one place upon another, which are not stamped in pursuance of this present Article. The additional stamp duty can be acquitted by means of an adhesive stamp of 10 centimes.

Art. 9.—All the legislative enactments relating to cheques drawn in France are applicable to cheques drawn abroad and payable in France. Cheques shall be stamped

with adhesive stamps before any indorsements are made in France. If a cheque drawn abroad (out of France) has not been stamped in conformity with the above provisions, the payee, the first indorser, the holder, or the drawee, may be compelled, under a penalty of 6 per cent., to have it stamped with the duties fixed by the preceding Article, before it can be used or negotiated in France. In the event of a cheque, drawn out of France, not complying with the provisions of Art. 1 of the law of 14th June, 1865, and of Art. 5 of the present law, it is subject to the same stamp duties as bills of exchange and negotiable instruments. In the latter case the payee, the first indorser, the holder or the drawee, may be compelled to have the cheque stamped before being used in France, under a penalty of 6 per cent. All the parties are jointly and severally liable to pay the above penalties.

ADHESIVE STAMPS. FORMALITIES REQUISITE IN EMPLOYMENT AND CANCELLATION THEREOF.

Decree of 19th February, 1874.

Art. 1.—

Art. 2.—

Art. 3.—Adhesive stamps must be affixed before being used, and in the following manner:—(1) As to bills drawn in France, upon the right hand of the instrument by the side of the signature of the drawer. (2) As to bills coming from abroad or the colonies, upon the right hand of the instrument, by the side of the acceptance or *aval*; in default of acceptance or *aval*, upon the back of the instrument; before indorsement or receipt if the bill has not been negotiated and if the bill has been negotiated, immediately following the last indorsement, written abroad or in the colonies.

Art. 4.—Every adhesive stamp must be obliterated at the moment when it is affixed to the instrument, as follows: How affixed. Cancelling of stamp.

—By the drawer for bills drawn in France. By the party signing as acceptor, *aval*, indorser or receiver, in the case of bills arriving from abroad or the colonies.

The obliteration consists in the inscription in ordinary black ink of the following particulars upon the spaces reserved upon the adhesive stamp for the purpose, viz.:—(1) The name of the place in which the stamp is cancelled. (2) The day, month, and year of cancellation; (3) The signature, according

to the cases provided in the preceding Article, of the drawer, the acceptor or *aval*, the indorser or party receiving payment. In case of protest in default of acceptance of a bill coming from abroad or the colonies, the stamp is affixed by the holder and obliterated by the receiver charged with the registration of the protest, who cancels the same with his official stamp and the addition of his signature.

Engraved
stamp.

Art. 5.—Firms, Companies, bankers, and traders can make use, for the cancellation of the above stamps, of an engraved seal or contrivance with prepared ink, which may be impressed upon the stamp, and must state the name of the firm, the place in which the stamp was cancelled, and the date of cancellation. The impress of such contrivance as above must be approved before use at the registration office of the district in which the firm resides.

FORMS OF BILLS OF EXCHANGE AND OTHER INSTRUMENTS.

The following forms are printed in the French language, and the respective English translations are appended, together with explanatory notes.

1. BILLET SIMPLE.

Je soussigné, François Clary, reconnais devoir à M. Nicolas Guillaumin, propriétaire à une somme de huit cents francs, qu'il m'a remise à titre de prêt; laquelle somme je m'engage à lui rendre et rembourser le avec les intérêts à cinq per cent à partir d'aujourd'hui.

Fait à le

Bon pour huit cents francs.

B. P. 800 fr.

F. CLARY.

Translation.

I, the undersigned François Clary, hereby acknowledge that I owe to Mr. Nicolas Guillaumin, landowner of the sum of eight hundred francs, which he has handed to me as a loan; this sum I bind myself to repay and reimburse to him on the with interest at five per cent from this date.

Signed in the

Good for eight hundred francs.

Fs. 800.

F. CLARY.

2. BILL OF EXCHANGE PAYABLE AT A FIXED DATE.

Paris, le 1 Avril, 1878. Bon pour francs 230.

Au 31 Juillet prochain, il vous plaira payer à M. Charles Duval, negociant à Paris, ou à son ordre, la somme de deux cent trente francs, valeur reçue en marchandises, laquelle somme vous passerez en compte sans autre avis de votre dévoué serviteur,

JULES GOUT.

A. M. Clunet, Banquier à Lyon, 7, Rue de l'Empereur.

Translation.

Paris, 1st April, 1878. Good for 230 francs.

The 31st July next pay to Mr. Charles Duval, merchant, in Paris, or his order, the sum of two hundred and thirty francs, value received in goods, which amount you will pass in account without further notice from your faithful servant,

JULES GOUT.

To Mr. Clunet, Banker, 7, Rue de l'Empereur, Lyons.

3. ACCEPTANCE OF A BILL OF EXCHANGE.

Accepté pour la somme de deux cents francs.

P. PONTIER.

Translation.

The acceptance is written upon the face of a bill of exchange as follows :—

Accepted for the sum of two hundred francs.

P. PONTIER.

4. INDORSEMENT OF A BILL OF EXCHANGE.

Payez à l'ordre de M. Charles Dumesnil, negociant à Nantes, valeur reçue en compte (ou en marchandises ou en espèces).

Paris, le 1 Avril, 1878.

A. SAMSON.

Translation.

Pay to the order of Mr. Charles Dumesnil, merchant, at Nantes, value received in account (or in goods or in cash).

Paris, 1st April, 1878.

A. SAMSON.

. *Note.*—The last holder who receives payment of the bill writes the words "*pour acquit*," and adds his signature.

5.—BILL OF EXCHANGE PAYABLE AT SIGHT.

Bordeaux, le 1 Avril, 1878. Bon pour fs. 500.

A vue, il vous plaira payer à M. Leopold Duroi, négociant à Paris, ou à son ordre, la somme de cinq cents francs, valeur reçue en marchandises, laquelle somme vous passerez en compte suivant avis (ou sans autre avis de)

Votre dévoué serviteur,

PINCHON.

A M. Charles Pernet, Banquier à Paris, Boulevard de Sebastopol, No. 42.

Translation.

Bordeaux, 1st April, 1878. Good for fs. 500.

At sight please pay to M. Leopold Duroi, merchant at Paris, or his order, the sum of five hundred francs, value received in goods, which amount you will pass in account as per advice of (or without further advice from)

Yours faithfully,

PINCHON.

To Mr. Charles Pernet, Banker, 42, Boulevard de Sebastopol, Paris.

6.—BILL OF EXCHANGE PAYABLE AT SEVERAL DAYS OR MONTHS, OR USANCES AFTER SIGHT.

Nantes, le 3 Mars, 1867. Bon pour fs. 2,000.

A deux usances de vue (ou à quinze jours ou à deux mois de vue) il vous plaira payer à M. Richard Guy, négociant à Bordeaux, ou à son ordre la somme de deux mille francs, valeur reçue en espèces, que vous passerez en compte suivant avis de

Votre dévoué serviteur,

G. BATAILLE.

A M. Jules Gout, Banquier à Paris, 9, Rue des Billettes.

Translation.

Nantes, March 3rd, 1867. Good for 2,000 fs.

At two usances after sight (or at fifteen days or two months after sight), pay to Mr. Richard Guy, merchant at Bordeaux, or his order, the sum of two thousand francs, value received in cash, which pass in account as per advice from

Yours faithfully,

G. BATAILLE.

To M. Jules Gout, Banker, 9, Rue des Billettes, Paris.

7. BILL OF EXCHANGE PAYABLE AT SEVERAL DAYS, OR MONTHS,
OR USANCES AFTER DATE.

The same form as the preceding, with the substitution of the word "date" for "vue."

8. BILL OF EXCHANGE PAYABLE TO THE ORDER OF THE DRAWER.

Lyon le. . . . Bon pour fs. 700.

Le 15 Mai prochain il vous plaira payer à mon ordre la somme de sept cents francs, valeur en espèces, que vous passerez en compte sans autre avis de

Votre dévoué serviteur,

MICHAL.

A M. Versier, Banquier à Lyon.

Translation.

Lyons. . . . Good for 700 fs.

The 15th May next please pay to my order the sum of seven hundred francs, value received in cash, which pass in account without further advice from

Yours faithfully

MICHAL.

To M. Versier, Banker at Lyons.

9. BILL OF EXCHANGE DRAWN IN SETS.

Marseille, le 13th Août, 1867. Bon pour fs. 1,000.

Fin Novembre prochain, il vous plaira payer par cette deuxième lettre de change, à M. Bessan, ou à son ordre, la somme de mille francs, valeur reçue en marchandises, que vous passerez en compte sans autre avis, la présente annulant les autres.

RENARD.

A M. Lebègue, negociant à Nantes.

Translation.

Marseilles, 13th August, 1867. Good for 1,000 fs.

At the end of November next please pay this second of exchange to M. Bessan, or his order, the sum of one thousand francs, value received in goods, which pass in account without further advice, the present bill annulling the others.

RENARD.

To M. Lebègue, Merchant at Nantes.

10. FORM OF RETRAITE.

Rouen, le 6 Mars, 1878. Bon pour fs. 1,232.

A vue, il vous plaira payer à M. Ratier, de Lyon, ou à son ordre, la somme de douze cent trente deux francs, valeur reçue en espèces, contre une traite de vous sur M. Benoit, de Rouen, et compte de retour, les dites pièces ci-annexées.

A. M. Leger, Banquier, Paris.

B. HALBRONN.

Translation.

Rouen, 6th March, 1878. Good for 1,232 fs.

At sight, please pay to M. Ratier, of Lyons, or his order, the sum of twelve hundred and thirty-two francs, value received in cash, against a draft drawn by you upon Mr. Benoit, of Rouen, and account of expenses of return, which documents are annexed hereto.

B. HALBRONN.

To M. Leger, Banker, Paris.

11. ACCOUNT OF RETURN EXPENSES OF A PROTESTED BILL.

Compte de retour et frais d'une lettre de change tirée par M. Champy, banquier à Paris, sur M. Benoit, de Rouen, à l'ordre de M. Duval, de Rouen, qui l'a passée à l'ordre du soussigné ; laquelle lettre de change, non acquittée à l'échéance, a été protestée, savoir :—

| | Fs. | cents. |
|---|-------|--------|
| Montant de la lettre de change protestée et ci-jointe - - - | 1,000 | 00 |
| Protêt et enregistrement - - - | 000 | 00 |
| Intérêts - - - - - | 000 | 00 |
| Courtage de la retraite - - - | 000 | 00 |
| Commission de la banque - - | 000 | 00 |
| Certificat de l'agent de change - - | 000 | 00 |
| Timbre du présent et de la retraite - | 000 | 00 |
| Port de lettres - - - - - | 000 | 00 |
| Perte à la négociation de la retraite - | 000 | 00 |

Total égal au montant de la retraite 1,000 00
Fait à Rouen le 16 Mars, 1878.

CHERRIERE.

Certifié véritable.

BOISSIERE,

Agent de change.

Translation.

Account of return expenses of a bill of exchange drawn by

M. Champy, banker, at Paris, upon M. Benoit, of Rouen, to the order of M. Duval, of Rouen, who indorsed the same to the order of the undersigned, which said bill of exchange, being unpaid at maturity, has been protested :—

| | Fs. | Cents. |
|--|-------|--------|
| Amount of protested bill of exchange annexed - | 1,000 | 00 |
| Protest and registration - - - - - | 000 | 00 |
| Interest - - - - - | 000 | 00 |
| Brokerage on the <i>retraite</i> - - - - - | 000 | 00 |
| Bankers' commission - - - - - | 000 | 00 |
| Certificate of stockbroker - - - - - | 000 | 00 |
| Stamp on these presents and on the <i>retraite</i> - | 000 | 00 |
| Postage - - - - - | 000 | 00 |
| Loss upon negotiation of <i>retraite</i> - - - - - | 000 | 00 |

Total equal to the amount of the *retraite* - 1,000 00

Done in Rouen 16th March, 1878. CHERRIERE.

Certified as correct,

BOISSIERE,

Stockbroker.

12. BILLET A ORDRE (PROMISSORY NOTE).

Paris, le 14 Mars, 1870.

B. P. fs. 350.

Au 25 Octobre prochain je paierai à M. Duval, ou à son ordre la somme de trois cent cinquante francs, valeur en marchandises.

Bon pour trois cent cinquante francs.

L. TISSOT,

28, Passage du Commerce.

Translation.

Paris, 14th March, 1870.

Fs. 350.

The 25th October next I will pay to M. Duval or his order the sum of three hundred and fifty francs, value received goods.

Good for three hundred and fifty francs,

L. TISSOT,

28, Passage du Commerce.

13. FORM OF CHEQUE.

Société des Dépôts et Comptes-courants.

Paris, le vingt cinq Avril, 1878.

Payez à Paul ou à son ordre (ou au porteur) la somme de douze cent cinquante francs.

Fs. 1,250.

PIERRE.

PRINCIPLES FOR AN INTERNATIONAL LAW TO GOVERN BILLS OF EXCHANGE.

Agreed upon by the Commission of the Association for the Reform and Codification of the Law of Nations appointed at the Hague in 1875, and approved by the Conference at Bremen in 1876.

1. The capacity to contract by means of a bill of exchange shall be governed by the capacity to enter into an obligation generally.

2. To constitute a bill of exchange it shall be necessary to insert on the face of the instrument the words "Bill of Exchange,"¹ or their equivalent.

3. It shall not be obligatory to insert on the face of the instrument or in any indorsement the words "value received," nor to state the consideration.

4. Usances shall be abolished.

5. A bill of exchange shall be deemed negotiable to order, unless restricted in express words on the face of the instrument or in an indorsement.

6. Bills of exchange to bearer shall not be allowed.

7. The rule of law of *distantia loci* shall not apply to bills of exchange.

8. A bill of exchange shall be negotiable by blank indorsement.

9. The indorsement of an overdue bill of exchange which has not been duly protested for dishonour for non-payment shall convey to the indorsee a right of recourse only against the acceptor and indorsers, subsequent to due date. Where due protest has been made, the indorsee shall possess the rights of his indorser only against the acceptor, drawer, and prior indorsers.

10. The acceptance of a bill of exchange must be in writing on the face of the bill itself. The signature by the drawee of his name or that of his firm on the face of the bill shall suffice to constitute acceptance.

11. The drawee may accept for a less sum than that for which the bill is drawn.

12. The cancellation of a written acceptance shall be of no effect.

13. No days of grace shall be allowed.

14. The holder of a bill of exchange shall not be bound, in seeking recourse, by the order of succession of indorsements, nor by any prior election.

15. Protest or noting for protest shall be necessary to preserve the right of recourse upon a bill of exchange dishonoured for non-acceptance or for non-payment.

16. Default of notice of dishonour for non-acceptance or non-payment shall not entail the loss of the amount of the bill; but the defaulting party shall be liable for any damage occasioned by such default.

17. The time within which protest must be made shall be extended in the case of *vis major* during the time of the cause of interruption, but shall not in any event exceed a short term to be fixed by the Code.

18. No annulling clause need be inserted in duplicates.

19. A simultaneous right of action on a bill of exchange shall be allowed against all or any one or more of the parties to the bill.

20. In the foregoing Articles the term bill of exchange shall include promissory note, where such interpretation is applicable; but "Promissory Note" shall not apply to coupons, bankers' cheques, and other similar instruments in those countries where such instruments are classed as promissory notes.

The Conference desires to express an opinion that, in the event of a universal Code for bills of exchange coming into operation, no special agreement between the parties or custom shall exclude or limit the operation of the Code.

ASSIMILATION OF THE LAWS AND PRACTICE OF VARIOUS COUNTRIES IN RELATION TO BILLS OF EXCHANGE.

1. *Capacity of parties to a bill of exchange. Disability of minors and married women.*—All the different systems concur in principle, but the period of majority differs in different States. The tendency of nearly all the present systems is to adopt the age of *twenty-one years* as the period of majority. The Code of Holland, however, takes *twenty-three years* or earlier marriage, and the Spanish Law still maintains the period of *twenty-five years*.

A liability incurred by an infant is, under nearly all the systems, voidable, not void.

Married women may be said generally to come under the same disabilities as infants, namely, that the contract on their

part is voidable; and even the Code de Commerce, Art. 113; the Italian Code, Art. 199; and the Spanish Code, Art. 434, do not, with certain exceptions, empower them to contract by means of a bill of exchange.

The Laws of England, of Scotland, and of the United States, concur in rendering the contract as against a married woman absolutely void.

2. *The form of a bill of exchange.*—The Law of the German Empire, Art. 4, s. 1; the Laws of Hungary, Austria, and Russia; the Code of Zurich; and the Laws of Sweden, Norway, and Denmark, make it obligatory to insert on the face of the instrument the words "*Bill of Exchange (Wechsel, lettre de change)*," or their equivalent.

The Code de Commerce (France), and the systems based upon the same; the Laws of Holland; the Belgian Law, 20th May, 1872; the Laws of England and the United States do not make this obligatory.

3. *The consideration; value (valeur).*—The Codes of Germany, Austria; Hungary, Russia; Belgium, Art. 1, 1872; the Laws of England and the United States, and those of Russia and Denmark, do not require that the word "Value" (*valeur*) or any equivalent expression, should appear on the face of the bill itself, nor in any subsequent indorsement.

The Code de Commerce, Art. 110, on the contrary; the Codes of Spain, Art. 429; Italy, Art. 196; Portugal, Art. 321; Brazil, Art. 354; the Dutch Law; and the systems based on these Codes, render it obligatory that the term *valeur reçue*, or an equivalent, be stated.

4. *Bills payable to bearer.*—The Laws of England, of the United States, and of Denmark, permit the issuing of a bill of exchange payable to bearer.

The German Law, Art. 7; the Code de Commerce, Art. 112; Cod. Com. Ital., Art. 198; Cod. Com. Espan., Art. 438; the Commercial Code of Holland, Art. 102; and the Russian Rules on bills of exchange (Rule 227), forbid the issuing of bills of exchange to bearer.

6. *Blank indorsement.*—The German Law, Art. 12; the Laws of England and of Scotland; of the United States; the Belgian Law, 20th May, 1872, Art. 27; the Portuguese Code, Arts. 354 and 356; that of Hungary; the Russian Law; the Danish Law; the Laws of Holland; and the Austrian Code permit indorsement in blank; whilst the Italian Code, Art. 223; the Code de Commerce, Art. 137; and the Spanish Code, Art.

467, prohibit such indorsement, giving only a partial validity to it, or even (Spanish Code) forbidding recovery.

6. *Indorsement after due date (échéance).*—Nearly all the various Codes and Laws give to an indorsement after due date the effect of a simple “cession,” that is, an assignment with equities attaching. The Dutch Law requires a deed of cession.

The German Law, Art. 16, makes this distinction: that, where due protest has been made, the right to indorse as before due date continues.

7. *Usances.*—The Code de Commerce (France), Art. 129; that of Spain, Art. 439; the Laws of England; of the United States; the Belgian Law, Art. 20; the Italian Code, Art. 216; the Portuguese Code, Art. 370; the Law of Holland; and the Hungarian Law, all allow the drawing of a bill at usance, whilst the German Law, Art. 30, and the Austrian Law, have abolished all reference to usance.

8. *Days of Grace.*—The laws of all countries (except France) allow days of grace, these varying from one to fourteen days; whilst usances vary from fourteen days to three months.

9. *Duplicates; copies.*—The German Law, Art. 67; the Code de Commerce, Art. 147; the Belgian Law, Art. 57; the Italian Code, Art. 232; and the Codes based on these laws do not require the annulling clause to be inserted on the face of the duplicate of a bill of exchange;

Whilst the Laws of England and those of the United States and the Dutch Code, Art. 160, require this.

10. *Acceptance.*—What constitutes acceptance varies greatly in different countries.

The English Law; the German Law, Art. 21; the French Code, Art. 122; the Spanish Code, Art. 461; the Portuguese Code, Art. 336; that of Brazil, Art. 394; the Belgian Laws, Arts. 7 and 16; the Laws of most of the Swiss Cantons; and the Dutch Code require that the acceptance be expressed in writing by the word “Accepted,” or some equivalent term.

The American Law permits verbal acceptance, though a holder may insist on the acceptance being in writing; wrongful retention over twenty-four hours, by the Law of Spain and several of the South American Codes, being deemed acceptance.

According to the Danish and Swedish Laws, retention is construed to mean refusal.

11. *Dishonour for non-acceptance.*—The German Law, Art. 25, and the Austrian Law; the Code de Commerce (France),

Art. 120; the Belgian Law, Art. 10; the Italian Com. Code, Art. 207; the Spanish Com. Code, Art. 465; most of the Cantons of Switzerland; and most of the Laws and Codes of South America, require security to be given in case of dishonour for non-acceptance;

Whilst the laws of England, those of the United States of America, those of Sweden and Denmark, the Hungarian Code, the Finnish Code, and some of the South American States, give to the holder on dishonour for non-acceptance, an immediate right of action for payment.

12. *Notice of dishonour*.—Notice to antecedent parties is required, both on non-acceptance and non-payment, by the Laws of England, the United States, Russia, Bolivia, and Brazil.

The Code de Commerce (France), Arts. 173 and 175; the German Law, Art. 45; the Spanish Code, Art. 522; the Chilian, the Argentine, and the Italian Codes, require protest.

The Code de Commerce requires that proceedings be taken against antecedent parties within 14 days, and a further period, according to the *distantia loci*, after protest; each successive indorser having the same period of delay allowed to him.

The German Law differs from the French Law, and adopts in part the rule of the Dutch and Portuguese Codes, rendering notice necessary to protect any claim for interest and re-exchange, and to protect against any claim for damage occasioned by delay; it likewise limits a time within which proceedings have to be instituted.

13. *Limitation of actions; time of prescription*.—The law as regards limitation of actions varies greatly in different countries.

The German Law prescribes three months, six months, and 18 months, according to place (further time being allowed, in case of fraud, against the acceptor and drawer).

| | | |
|--|---------|----------|
| Code de Commerce (France), Art. 189 | - | 5 years. |
| Belgian Code, Art. 82 | - - - | 5 " |
| Italian Code, Art. 282 | - - - - | 5 " |
| Portuguese, Art. 323, and Spanish, Art. 557, Codes | 4 | " |
| German Law, Art. 77 | - - - | 3 " |

As against the acceptor.

As against other parties—

| | | |
|--------------------------------|---------|-----------|
| The Dutch Code, Arts. 206, 207 | - - | 10 years. |
| England | - - - - | 6 " |
| Hungary | - - - - | 2 " |
| United States | - - - - | Various. |

STOCKBROKERS.

(Agents de Change).

A stockbroker is an official person whose business it is, Position of a stockbroker. exclusively of all other persons, to conduct the sale of public or other securities which are negotiable, and to publish authentic information of the position of their securities, as also of the gold and silver market.

The law enacts that there are stockbrokers in all towns which have a *Bourse de Commerce* or Exchange.

In towns where there is no *Bourse*, private securities are Where there is no Bourse. negotiated between individuals or by the medium of bankers. Public securities are sold or transferred by stockbrokers on established *Bourses*, in accordance with orders transmitted to them by the *recettes générales*.

The same person may unite the duties of a stockbroker with those of an insurance broker or shipbroker, if so authorised by the certificate of his appointment, or by a special certificate granted to him after his appointment.

Stockbrokers are appointed by a certificate granted by the Certificate. President of the Republic. The following are the conditions of the appointment :—

1. The candidate must be a French subject or a Conditions of appointment. naturalised foreigner.
2. He must be not under 25 years of age.
3. He must produce certificates of capacity and character signed by the heads of banking or trading firms.
4. He must be introduced by a member of the Stock Exchange, or by the widow, heirs, or representatives of a member, except in the case of appointment to a post newly established.
5. He must be accepted by the syndicate or committee of the Stock Exchange,

6. And also by the Minister of Finance in Paris, and on *Bourses* which have a *parquet*: by the Minister of Commerce, on *Bourses* which have no *parquet*.
7. He must be under none of the following legal disabilities:—

Disqualifica-
tions.

- (a.) An undischarged and uncertificated bankrupt; or if he has assigned all his property for the benefit of his creditors, or made a private composition with his creditors, he must have received legal restoration to his original position (*réhabilitation*).
- (b.) A person who has been dismissed from the office of stockbroker.
- (c.) A person who has been twice convicted of illegally exercising the duties of a stockbroker in places where such duties are only allowed to persons appointed by the Government.

8. He must furnish security to the amount required. In Paris the sum is 250,000 fs.; at Lyons, 40,000 fs.; at Marseilles and Bordeaux, 30,000 fs.; at Toulon and Lille, 12,000 fs.

Right to intro-
duce a successor.

Each broker, on retiring, has the right to introduce a successor, unless he has been dismissed from his post; and this right, which thus makes the position of broker a valuable property, passes to the widow, heirs, or representatives of a broker who dies while holding office.

Rates on the
Paris *Bourse*.

In Paris the broker must, before introducing a successor, obtain the consent of the Committee of the Stock Exchange in favour of his nominee. If the Committee assent, it is their duty to notify the same, with the name of the candidate, to the Minister of Finance.

Practice in the
departments.

In the departments, the Committee notify their consent and the name of the candidate to the prefect of the district, who in turn transmits them to the Minister of Commerce. The papers should be accompanied by the resignation of the member retiring, the agreement made with him, and documents showing that all the legal conditions have been complied with.

Devolution of
this right.

The right to appoint a successor, being personal property, is reckoned in the *communauté de biens* between husband and wife, and is included among the "inheritance" of a member,

and must be entered in the accounts of the member's heirs. Further, a member who has sold his right but not received payment, has a lien upon his right, except in the event of the bankruptcy of his vendee.

The law provides that a broker who has been dismissed Dismissal. from his post is deprived of all right to introduce a successor. Since, however, this operates so as to deprive his creditors of a valuable security, it is usual for the Government, when appointing a successor in such a case, to impose upon him an obligation to pay a fixed sum to the person entitled to receive it, *e.g.*, to the syndics of the bankrupt member, or to some authorised person, whose duty it is to distribute this among the creditors. This is a matter of custom, and in reality an act of generosity on the part of the Government.

If the Committee, for good cause, resolve that a member deserves expulsion, they may, instead, order him to send in his resignation within a fixed date, and to introduce a successor. If he complies, he avoids the penalties of dismissal.

It follows from the formalities and regulations prescribed, Restrictions on transfer. that a stockbroker cannot sell his post by auction, or dispose of it in any but the regular way.

Until the resignation of a member is accepted, it may be Resignation. withdrawn at any time. Therefore, if a member withdraws his resignation, after having agreed to take a certain price from his successor, the latter cannot compel him to resign. His proper remedy is by action for damages.

The amount charged by a member to his successor may be Price paid by successor. disallowed by the Government, if the price seems to be higher than the real value of the position. It follows that if the member retiring exacts from his successor an agreement to pay a price above that submitted to the Committee and to the Government, the agreement is absolutely void. Any deed, defeasance, compromise or arrangement, having practically the same object, is equally void. Briefly, any agreement which alters in any way, either in the interest of the vendor or vendee (the member or his successor), the arrangement submitted to the Government will be treated as null and void, and any payment made in pursuance of such an agreement is void as against the creditors of the person making the payment.

Any disputes which arise in reference to the assignment Jurisdiction of the Courts. or sale of a right to membership of the Stock Exchange are decided by the civil Courts.

Formation of
a new *Bourse*

Where no *Bourse* exists, and it is intended to establish one, a special committee of 10 bankers or merchants draws up a list of candidates, inserting twice as many names as are to be appointed. This is sent to the Prefect, who may make additions to it, and by him to the Minister of Commerce, who may also add the names of other candidates. The President of the Republic finally makes the appointments.

Deposit.

In Paris, each broker deposits, besides his security, a further sum of 100,000 fs., as payment to the general reserve fund, which is held to secure the payment of liabilities between members. If a member finds that his dealings show a deficit, the committee has power to advance him a loan, not exceeding 500,000 fs.

Licence.

Each stockbroker, after being admitted, must take out a licence to deal. In Paris this costs 1,000 fs.; in other towns, it varies according to their population.

Stockbrokers in France, it is thus seen, are State officials. They are strictly forbidden to engage, directly or indirectly, in any commercial or banking business; and their strict duty is to serve as agents between genuine buyers and sellers of stock.

Quære, are
stockbrokers
traders?

It is still a point in dispute whether stockbrokers are to be considered as traders, for the purpose, that is, of being subject to the Tribunals of Commerce in matters relating to their engagements, for publishing their marriage settlements and *régime*, &c.

Limitation of
Members.

The number of brokers in Paris is limited to 60.

Supervision.

The certificate of appointment states the town in which the broker is to carry on his dealings; and it is his duty to reside within the *commune* to which he is assigned. Further, they are under the supervision of the municipal authorities and cannot carry on their business outside their official residence.

Special partner-
ships

In the more important *Bourses*, where there is a *parquet*, a special place set apart for stockbrokers and also an official list of quotations of prices, stockbrokers are allowed to form a kind of partnership with outsiders, thus increasing the capital at their command, and improving their own credit. Such associations are not allowed elsewhere. The capital thus subscribed may not be divided into shares; and the capitalists take the position of special *commanditaires*, who cannot under any circumstances take the place of the managing member. The funds supplied by them form part of the assets which may be claimed by the business creditors of the stockbroker.

The exclusive rights and privileges of stockbrokers, which they possess as a monopoly, are— Rights and privileges.

1. To conduct negotiations or transfers of public stocks and funds, and of all securities that have a market value, and can be entered on the current list of quotations.
2. To negotiate for clients bills of exchange, promissory notes, and all negotiable instruments.
3. To publish an authorised or official list of the various prices of negotiable stocks and securities, and of the fluctuations in the money market.
4. To certify accounts of "differences" of bills of exchange and promissory notes.

While enjoying this monopoly, the rights of stockbrokers are only protected against the action of outsiders infringing upon them. For instance, no person not a member of the *Bourse* can negotiate for commission a sale of securities. At the same time, the owners of shares or other securities may, if they please, transfer or sell them to each other without the medium of a broker. Heavy penalties are inflicted upon any persons, not properly qualified, who transact the business of stockbrokers; the dealings are declared null and void, and the offending party is liable to be fined 3,000 fs., imposed by the *Tribunal Correctionnel*. How far these rights extend.

Penalties for infringement.

The prosecution for this offence must be instituted within three years after its committal; and if an action for damages is claimed by a party injured, he must pursue his remedy within the same time. Limitation of actions.

The *Petite Bourse*, in which the dealers are known as *coulissiers*, is in law illegal. However, its reduced tariff of brokerage and commission attracts speculators, and it is still in existence. *Petite Bourse.*

Considering the extensive privileges of stockbrokers, the law imposes upon them various obligatory duties. Thus, a broker is bound to act for a client who applies to him in any legitimate operation; and in case of refusal to act, a complaint may be lodged with the *Procureur* of the Republic, whose duty it is to prosecute the delinquent. Duties of stockbrokers.

Unless specially authorised, it is the duty of a broker not to reveal the name of anyone of his clients; in this particular, his position of trust demands special secrecy and caution on his part. It results from this, that the clients have no right Secrecy.

Rights of
clients.

of action against each other, but only against their respective brokers; and also that the broker alone can enforce, by action, a bargain made for his undisclosed principal. If, however, the clients wish to be known to each other, the broker's duty of secrecy ceases, and they possess the right of action against each other.

Personal
liability of
brokers.

Strictly speaking, a broker should demand and obtain from his client any stock which he is authorised to sell, and the price of any stock which he is to buy, before conducting the operation. It is superfluous to say that this is by no means uniformly observed. In case of default, however, the broker becomes personally liable, and his security may be seized to meet his liabilities.

Cover.

The deposit of money or stock for this purpose is called "cover" (*couverture*), and is acknowledged by a formal receipt from the broker. In default of such receipt, the broker's memorandum book or ledger, &c., will be evidence of the deposit. The refusal to give this receipt entailed originally a fine of 300 livres and the penalty of dismissal, but the law of 1862 contains no such penal enactment.

Time bargains.

Bargains may be made on the Stock Exchange to be taken up at a definite time, usually the end of the current month. Of these some are absolutely binding, by which the buyer or seller is compelled to complete them at the time fixed; others are allowed to go off, on payment of an agreed premium.

Lien on secu-
rities pledged.

If a client has pledged securities by way of cover for any transaction with his broker, the latter has a lien upon them for the purposes of the sale or purchase which he is authorised to make; and if the client assigns his own right to such shares, &c., so pledged, the assignee takes, subject to the broker's right to dispose of them for the amount due to him from his client.

Lien on
purchases.

If a broker has purchased for his client securities *à terme* (i.e., to be taken up at a fixed date), without having received from him the price for them, the broker has a right, called "right to execution," to retain and sell the securities, and in preference to other creditors, should the client fail. He is bound, however, to wait until the date fixed for the completion of the bargain; and he must give the client formal notice of his intention, either by summons or by letter, requiring him to take up the bargain and to pay the price due. Else, the broker can have the stock carried over to the next account day; but only after consulting with his client, who might

prefer to settle at the existing loss (if any) rather than to risk a further fall in the stock.

A stockbroker is also bound to keep a day-book, ledger, and memorandum-book, examined and approved by the judge of the Tribunal of Commerce, or by the mayor or *adjoint* of the commune, and to enter therein all particulars of his sales and purchases and all business transacted by him. As a matter of necessity, these books can be admitted in evidence, but not until the claim made by a broker is disputed by the other side. Any wilful alteration in the day-books or ledger is treated as a forgery and punishable by the criminal Courts. The books should be preserved for 10 years at least, as they frequently contain the only evidence of the transactions recorded in them. It is the practice for each broker to deliver to the other a note of the bargain made between them. If this note or memorandum is signed by the parties, containing, as it should, the details of the sale or purchase, its evidence is incontestable.

PROHIBITIONS IMPOSED UPON STOCKBROKERS.

No stockbroker is permitted to engage in any commercial or banking undertaking on his own account, nor to take part directly or indirectly in any such trading enterprise. This must be understood with the qualification that regular trading only is forbidden to them. A broker, *e.g.*, may invest his money in a *Société en commandite*, or in shares in a *Société anonyme*; but he might not become a member of an ordinary partnership firm (*en nom collectif*). It has also been decided that a stockbroker may not act as promoter of a Company, or take a commission for getting its shares taken up.

Brokers are forbidden to guarantee the execution of bargains in which they engage for on behalf of their clients. However, if a broker advance money to a client, for the purposes of a transaction on the *Bourse*, the client cannot repudiate the advance. No civil penalty, in other words, is entailed upon a broker who disregards the prohibitions to which he is subject; but he may be dismissed from his post and fined by the *Tribunal Correctionnel*: and if once dismissed, he cannot be restored to his original position.

Further, a broker may not negotiate a bill of exchange

Necessary
books.

Brokers not
allowed to act
in other trades.

Advances to
clients.

belonging to persons who have failed or suspended payment, if he knows their position ; he may not negotiate in blank bills or promissory notes ; assign French Rentes above shares of 50 fs. belonging to minors or to persons under legal guardians, or incapacitated otherwise ; assign French Rentes or shares in the Bank of France applied to *des majorats*, of any amount whatsoever ; negotiate undertakings for shares in railway Companies before the Company is formed ; negotiate shares, scrip, &c., in Companies not formed according to the requirements of the law ; negotiate shares or certificates of shares not properly stamped ; undertake purely gambling bargains, nor allow himself to be represented by anyone else on the *Bourse*, except by a duly qualified broker. Various fines, from 300 to 10,000 fs., are attached to these offences.

Neither may a broker keep in France, or in any foreign country, an accredited agent as his representative, or to transmit orders directly to him ; nor carry on Stock Exchange operations at any time beyond the hours appointed.

Penalties in
case of
bankruptcy.

The penalties of bankruptcy are more severe in the case of a stockbroker. The criminal Court decides whether he is to be declared simple or fraudulent bankrupt ; if simple, the punishment is imprisonment with hard labour for a varying term ; if fraudulent, with hard labour for life.

Commissions.

The charge or commission which brokers can exact is due to them independently of any express promise. Certain percentages are payable to them, varying on the different stocks, as on the English Stock Exchange. The rates on short accounts are higher than the others. They also vary in different towns.

Double
responsibility of
stockbrokers.

Stockbrokers have a twofold responsibility, as paid agents and as State officials. They are personally liable for the execution of any contracts into which they have entered, although these are for third parties ; they virtually guarantee the solvency of their clients ; and in regard to the transfer of stock, they are responsible to the public treasury for the validity of the transfer, so far as it concerns the identity of the transferor, his signature, &c.

Their position of paid agents makes them responsible for mistakes or negligence in the conduct of their business.

1. *In reference to their Clients.*

Agent and
principal.

The broker is an agent and his client the principal. He is therefore bound to execute his orders with care and fidelity.

It follows from this position, that if a broker sells stock and neglects to receive the price of it within the proper time fixed, he becomes personally liable for that amount to his client; or if he buys stock, and neglects to accept delivery of it. In this latter case, the delivery may be of the utmost importance to the client; the stock, for instance, may be redeemable at certain definite drawings, and the client, not holding the coupons, may miss his chance in the drawing.

Results of this relation.

Again, if the broker's instructions are to buy or sell at a certain price, he has no right to buy at a higher or sell at a lower price: if he disregards his orders, he will be liable for the difference. Or, if after having received a sufficient cover, the broker delays to execute his orders, he is liable for any loss that may be sustained by his delay.

Fulfilment of orders.

Besides having the capacity and functions of agent, the stockbroker is also a *dépositaire* in respect of the shares, &c., entrusted to him; and being in his capacity liable to all the obligations involved in a bailment, he is responsible for loss or embezzlement by his clerks or employés, or by any person whom he has allowed to be in his office as his representative. He would also be responsible for the misconduct of any third party, if, *e.g.*, he placed in the hands of some friend, without authority from his client, the proceeds of a sale concluded for the client.

Duties as bailee.

On the other hand, he is not bound to warn his clients of the risks which they may incur by investing in any particular securities.

There is an important question which arises in the event of the stockbroker becoming bankrupt, namely: At what moment do the shares bought by the broker become the property of the client? If the client has become the legal owner, he can claim them, and will not be obliged to prove for a dividend merely.

Effects of bankruptcy of broker on stock purchased by him.

In the first place, shares payable to bearer follow the ordinary rules of sale. The client becomes owner as soon as the shares are delivered to him. Constructive delivery, *e.g.*, if the broker has entered in his books the name of his client as purchaser of certain specific shares, is equivalent to delivery; as is also a letter to the client, indicating the numbers of the shares, and specifying them as bought for him, if the purchase really has been made.

Shares to bearer.

Unless some such delivery is made, the client is not the owner of the shares, and must prove like another creditor.

2. *In reference to other Brokers.*

Duties to other
brokers.

Towards other brokers the broker contracts to guarantee the execution of the bargain concluded with him; that is, he undertakes to deliver what he sells, or to pay for what he buys. This always holds so long as the parties are not known to each other.

The liabilities just mentioned are all that can be incurred between broker and broker. If the seller does not deliver the stock dealt with, or if the buyer does not pay the price of the stock bought, the broker must meet the engagement. The broker injured by the default can sue the other in his own name.

In the relations established between a broker in the country and one in Paris, as the principal is undisclosed, each stands in the position of principal to the other, and any action by one against the other is direct.

3. *In reference to third parties.*

Special
liabilities to
third parties.

Towards third parties a stockbroker has certain special liabilities, resulting from the special nature of his functions, besides those common to ordinary agents.

1. *In reference to French Rentes.*

Rentes.

There are two distinct operations in these securities—1. The sale on the *Bourse*; 2. The transfer at the Treasury Office. The sale on the *Bourse* merely establishes, as already seen, a contract between the two brokers—the one agreeing to deliver and the other to pay for a certain amount of stock.

How trans-
ferred.

The transfer of the stock at the Treasury Office imposes a distinct set of obligations on the broker. The transfer is made in his presence, and he certifies the identity of the owner, verifies his signature, and also the documents relating to the sale. Therefore, if the signature is forged, the broker is liable to make good to the real owner the value of the stock sold; and a purchaser *bona fide* for value, having paid the price, cannot be sued, unless the stock was stolen, in which case he will have to restore it or tender the price of the purchase. The remedy of the agent is against the client who gave him his orders, and who is either the author of or an accomplice in the forgery.

Forged
signature!

Liability of the
Treasury.

The only case in which the Treasury is liable, is when the forged transfer has taken place by a breach of trust on the part of one of its employés in the exercise of his functions.

If, however, the transfer is of stock belonging to a person legally incapacitated to deal with it, the agent is not responsible to the real owner, unless the stock or shares express on the face of them that they are the property of a person under disability.

Dealings by
incapacitated
persons.

This liability of a broker is limited to five years subsequent to the transfer.

Limitation of
actions.

2. *Bank Shares and dealings in Commercial Bills.*

In the transfer of bank shares, the duty of the broker as to certifying the identity of the drawer who signs the declaration of transfer is the same as in the transfer of Rentes.

Bank shares.

In respect of bills of exchange and other bills negotiated by him, the broker guarantees the signature of the person who last signed the documents. This rule only applies when the negotiation of the instruments is carried on in the regular way on the *Bourse*, not for instance when it is done outside, and the parties are known to each other, the broker being merely the medium through which they act.

Bills of
exchange, &c.

Limitation of right of action—five years.

3. *Transfer of lost or stolen Securities payable to bearer.*

This subject, which was before indefinite and undecided, was settled by the Law of 1872, June 15th. The chief enactments of this law are as follows:—(See special chapter.)

The owner of shares, who has lost them in any way, should first take the necessary steps for stopping them (*faire opposition*), as prescribed by Art. 2 of this law. He must then give notice by *exploit d'huissier* (writ signed by a *huissier*), to the Paris Committee of the Stock Exchange, that the shares are stopped (*opposition*), specifying the number, character, nominal value, numbers, and if possible, the series of the shares. This notice should also contain, when possible, the time and place when and at which the claimant became owner, the manner in which he acquired his title, and the circumstances under which he has lost the shares.

Proceedings
when securities
are lost or
stolen.

An official bulletin contains these *oppositions*, as presented by the person who claims to be owner. When this has been published—it is issued daily—the broker who deals in the shares stopped becomes responsible for them to the owner. Practically, therefore, the broker, before dealing in shares to bearer, should inform himself that they are not mentioned in the *Bulletin*; or if, receiving shares from an unknown client,

Publication of
the *oppositions*.

he negotiates them immediately, without waiting to see if they are advertised in the *Bulletin*, he becomes personally responsible, for in this case ordinary prudence should induce him to take precautions.

In respect of French Rentes, those which are *titres nominatifs* can be effectually stopped by lodging an *opposition* with the Treasury. *Titres au porteur* (Rentes payable to bearer) can also be similarly stopped; but as these can be transferred without recourse to any brokers or agents, the party purchasing them without making inquiries will be liable to restore them to the rightful owner if they have been stolen or lost.

Venue for suits
against stock-
brokers.

Actions against stockbrokers for any act done by them as such are brought before the Tribunal of Commerce of the broker's domicile. The penalties differ according to the facts of each case, a difference being observed between default made in matters where the broker's character of agent is of the essence of the contract, and default committed in his ministerial capacity (*faits de charge*), e.g., relative to the signature which he has to certify to, &c. In the latter case the client has a special privilege in his action against the broker; in the former his remedy is one of common law.

Jurisdiction of
the Courts.

Actions by brokers against their clients are, as a rule, only capable of being tried before the civil Courts, unless the business is of a purely commercial character, and this is a question of fact.

The special functions of the Stock Exchange Committee are beyond the scope of the present work.

The appointments of stockbrokers are registered at the Tribunal of Commerce, and the broker is sworn in before the same tribunal.

Duty.

The duty on the registration is reckoned at two per cent. on the price stated in the deed of assignment. If the assignment is gratuitous, the duties payable on deeds of gift, *inter vivos*, are payable. If the right to the office passes to the broker's heir, the duty of two per cent. is charged on a valuation of the office and its appurtenances.

If a new office is created, the registration duty is reckoned at two per cent. on the security required from the candidate.

Stamps.

The memoranda and accounts of stockbrokers are stamped with 50 centimes up to 10,000 fs., and with 1 f. 50 c. for all sums above this amount.

CONTRACTS OF AFFREIGHTMENT.

THE term *fret* (in the Mediterranean styled *nolis* or *nolisement*) is defined as the contract for hiring a vessel or part of a vessel for the carriage of goods. Definition of freight.

The word *fret* (like the English *freight*) is also used for the price at which the hiring is fixed.

There are three essentials to a contract of affreightment:— Essentials of the contract.

1. A vessel that is hired.
2. A use to which the vessel is to be put.
3. A price to be paid for this use.

The owner or person who lets the ship on hire is called the *fréteur*; the merchant or consignor who hires the ship is called *affréteur* or *chargeur*.

The contract of affreightment may be entered into either by the owners, or by their duly appointed agent, or by the master of the vessel acting as their agent. As a rule of law, the power of the master to act as such agent is tolerably general, and he can bind the owners by his contract, even without special authority from them, if the circumstances of the case prevent him from obtaining instructions from them or their duly appointed agents. It is to the interest of trade, and of the owners themselves, that the master of a vessel should have this power to make bargains in the absence of his principals; but if the owners are present in the place where the contract is to be made, the master should apply to them for instructions; and if owners to the extent of one-half of the value of the vessel are present, the master cannot contract without special authority from them. This rule, however, though binding on the master, is not binding on third parties who have contracted with him in ignorance of the fact that the owners or their duly authorised agents were present at the Persons by whom the contract may be made.

Powers of the master.

place of making the contract, but were not consulted by him. A contract thus made binds the owners as against third parties, while the master is liable to an action for damages at the suit of the owners.

Rights of third parties.

It follows that if a merchant or consignor of goods, in ignorance of the fact that the master has been expressly forbidden to enter into a contract of affreightment, *bonâ fide* contracts with him, the contract cannot be impeached by the owners.

Foreign vessels and owners.

A contract of affreightment may be entered into with the master or owners of a foreign vessel in the same way as with the master or owners of a French vessel. The preference formerly granted to the latter, that no foreign vessel could be hired if there were any French vessels at the port of hiring willing to undertake the contract, has been abolished.

Different Methods of Forming the Contract.

Rules that govern a hiring of a whole ship.

1. If the contract of affreightment be for the whole vessel, it is usually made either for the whole voyage (whatever time this may take), or for a definite time, or from month to month, and the price to be paid is arranged beforehand, according to the circumstances of the hiring. The hiring of the whole vessel includes all portions of the vessel capable of receiving and carrying goods, but does not include the master's cabin nor the room necessarily reserved for the crew, rigging, ship's stores, &c. By custom, the master is authorised to convey goods in these parts of the vessel, which are excluded from the general contract; but it is usual to insert a clause expressly stipulating that goods shall not be so conveyed by any members of the crew of the vessel hired.

Contract from month to month.

When the affreightment is from month to month, at a certain sum per month, the freight runs, in the absence of any contrary agreement, from the day of sailing until the day of unloading at the port of destination. Part of a month is reckoned as a whole month, and the unloading must be actual, not constructive; therefore, if a vessel is detained in quarantine, the freight runs until the cargo is actually discharged.

2. If the contract is partial, being only for a portion of the vessel, it may be :—

Various forms of contract for partial affreightment.

(a.) *A forfait, i.e.*, at a gross sum agreed upon for the cargo shipped, whether its weight is ascertained or not.

- (b.) In a specified part of the ship put at the disposal of the consignor.
- (c.) *A cueillette*, when the cargo is taken on condition that the master succeeds in completing his cargo from other sources.
- (d.) By weight or measure, *e.g.*, at so much per ton of goods shipped.

Charter-Party.

Definition.—The contract by which the owner of a vessel, or the captain as his agent, agrees to let the whole or a portion of the vessel for the carriage of goods. A form of charter-party will be found in the Appendix. Definition of a charter-party.

This instrument defines the engagement entered into by the parties, and according to its terms the contract must be construed. Foreign vessels as well as French have all the benefits of this form of contract.

Essentials of the Contract.

A charter-party must be in writing, and must be signed by the parties. The presence of a notary, or of a shipbroker, is not necessary; but if the parties are unable to sign their names, in that case the contract should be made before a notary. Contract must be in writing and signed.

The same rule applies if the charterer (*affrèteur*) contracts with some third party.

If a contract for affreightment, not by charter-party, is entered into by telegram, the telegram is considered as equivalent to a charter-party, and the parties are presumed to contract subject to the customs of the localities. Presumption in case of other contracts.

If a charter-party is drawn up in a foreign language, it will be valid; but if, when so drawn up, it is signed by a master who does not understand the language used, an interpreter or a consul should be present (and his presence should be mentioned by the document): otherwise, it may be impugned by the party signing or by those on whose behalf he signed. Charter-party in a foreign language.

If the contract is lost or destroyed, or if it has not been signed by the parties, the engagement may be proved by correspondence, or the log-book of the ship, or by the bill of lading. How proved, if original lost.

The charter-party should state—

Contents of the contract.

The name and tonnage of the ship;

The names of the master, owner (or other person in whose behalf the contract is made) and charterer;

The place and time arranged for loading and unloading;

The price of the freight;

And also, whether the contract is for the whole or part of the ship, and the indemnity payable in case of delay.

Effect of omissions.

An omission to state in the charter-party the name of the ship annuls the contract; and if the affreightment is made *à cueillette* (*supra*, p. 259), the tonnage must be mentioned; otherwise, the first charterer has a right to have the contract annulled. The names of the *fréteur* and *affréteur* (owner and charterer) are also indispensable.

Results of misrepresentation.

In the case of mis-statement made by the master as to the tonnage of the vessel, the charterer can maintain an action for damages against him; but the onus of proof of damage really sustained rests upon the plaintiff.

It may be mentioned that in estimating the tonnage of a vessel, the English method is, by the Law of May 24th, 1873, invariably adopted.

With regard to foreign vessels, the tonnage inserted in a charter-party entered into in a French port is considered to mean the tonnage according to the official measurement of the country to which the vessel belongs.

The charter-party should state the manner in which the unloading of the cargo is to be carried out.

Local usages govern the loading and unloading.

The time for loading and unloading is regulated by the customs which prevail at the different ports. The custom varies considerably in different places—an average of 15 days will be usually allowed. The term applied to the days thus allowed (lay days) is *staries*, or *jours de planche*.

Demurrage.

It is usual to insert a clause in the charter-party, providing for a fixed payment *per diem* for the time which may be occupied in loading or unloading beyond the lay days allowed; otherwise, the custom of the port regulates the payment to be made. Fifty centimes per ton of the ship's registered tonnage is allowed to sailing vessels, and one franc per ton for steamers.

Payment.

It is also usual to insert in the contract the mode in which this payment shall be made, whether in French money or

foreign. If no such stipulation is inserted, the master must accept payment in the coin or paper current at the port of unloading, *i.e.*, he must himself sustain any loss incurred by the rate of exchange.

Any ambiguity in a charter-party, *e.g.*, in the sum stipulated for as freight, may be cleared up by reference to the bill of lading. As a rule, in case of disagreement between the charter-party and the bill of lading, the Court will decide as to the intention of the parties. And, to explain the charter-party, the Court will look to the law of the place where it was signed, applying the maxim, *Locus regit actum*: and the Tribunal of Commerce of the place where the contract is to be executed has full jurisdiction.

Charter-party supplemented by bill of lading.

Duties of the Affreightor (*Fréteur*).

The *fréteur* must put his ship at the disposition of the charterer, according to the terms of the contract. He must not substitute another ship for the one mentioned in the charter-party; and if he sell the ship, he will be bound to indemnify the charterer for any loss that may have been caused to him thereby.

Duties of the affreightor.

In all contracts of affreightment there is an implied warranty of seaworthiness; and for any loss caused by the unfitness of the vessel hired the *fréteur* is responsible in damages. It has been decided, that if the ship has to put into port for repairs, owing to its having been unseaworthy at the time of starting, and afterwards completes its voyage, no freight can be demanded from the charterer.

Warranty of seaworthiness.

The onus of proof in the matter of unseaworthiness, after the ship has been duly inspected, rests upon the charterer. If not inspected, the presumption of law is that it was unseaworthy. However, if the bad condition of the ship was known to the charterer at starting, he will be considered to have accepted the risk, and will have no claim to compensation.

Legal presumption.

If the unseaworthiness is proved during the voyage, and in consequence the cargo does not arrive at the port of destination, according to the conditions of the charter-party no freight is due.

In case of a contract of affreightment for the entire vessel, the *fréteur* cannot, without the consent of the charterer, accept another cargo, in the event of the charterer not completely loading the vessel; and if he does, the freight on the goods so

Deficiency in cargo supplied.

loaded belongs to the charterer. But the *fréteur* may dispose of the remainder of the vessel as he pleases, in the case of a contract for partial affreightment.

Damages.

In all cases where damages are claimed, the judge of the Tribunal of Commerce assesses them.

It is also the duty of the captain or of the *fréteur*—

1. To carry out and oversee the loading of the cargo; and for this purpose he is bound to see that the loading is so effected as to dispose of the cargo in the best and safest manner.

2. To give to the consignor a bill of lading.

3. To start at the date fixed.

4. To exercise all proper care in the conveyance of the cargo.

5. To unload at the port of destination within the date fixed.

6. To deliver the goods to the consignee named in the bill of lading.

Duties of the Charterer.

Duties of the charterer.

The chief obligation of the charterer is to pay the freight agreed upon, and he ought therefore to furnish a sufficient quantity of goods to answer for it. The whole freight is payable, whether the cargo is or is not fully loaded, but the captain should protest to the charterer, before signing the bills of lading, if he wishes to claim freight for the part of his vessel which has not been filled up according to the charter-party. If the captain sails without declaration on the bills of lading of the deficit, or without giving notice or entering a protest to the affreighter, he will be liable to him in damages.

Local usage governs the incidence of the costs of this declaration.

Certificat de visite.

If the Admiralty officials refuse the *certificat de visite*, on the ground that the charterer has loaded too many goods on board, the captain incurs no responsibility if he starts at the fixed time with a cargo which has become incomplete owing to the orders of the officials.

The duties of the charterer may be further divided:—

1. If the goods reach their destination without delay the charterer must pay the freight in full, but he may deduct from it the amount of any damages due to himself.

Loss of goods.

If the goods shipped are liquids (*e.g.*, wine, spirits, oil, &c., or such articles as molasses), in casks, and without any default of the consignor the contents have been lost on the voyage, no freight is payable. The charterer must abandon the empty

casks to the captain, and if part only has been lost, he may abandon part and claim that which remains.

The freight becomes payable so soon as the goods are unloaded. If the consignee refuses to accept them, the captain may obtain an order from the Court for their sale in order to obtain payment of his freight; and if the proceeds do not realise a sufficient sum to satisfy his claim, he may bring an action against the charterer. But he should first proceed against the consignee, who is personally liable to him for the freight, if by his own conduct he has done any acts which show that he intended to accept the position of consignee.

Rights of captain on refusal of consignee to accept cargo.

If the bill of lading is payable "to the consignee or order," and no person appears with the bill endorsed to his order by the consignee, the captain may sell the goods for his freight on the refusal of the consignee, whose name is on the bill of lading, to accept. If it is simply to bearer, the fact that no one appears to accept the consignment is equivalent to a refusal to accept.

Bills of lading "to order" and "to bearer."

On such refusal, the captain should obtain a summons and call on the consignee to attend when the Court grants power to sell the goods in payment of freight. The Tribunal of Commerce grants this power in France; the French consul in foreign countries; or, where there is no consul, the magistrate. In some places, local custom allows the captain to sell without any judicial or quasi-judicial authorisation.

Powers of the Court.

If by the charter-party freight is agreed for a voyage out and home, it is payable although the return voyage is made without a cargo; provided that the default in loading the return cargo is due to the act of the consignee, and that the captain has given proper notice to him and entered his protest; and if the return cargo is incomplete, the charterer is liable to the captain in damages.

Voyage out and home.

2. When the goods are delayed reaching their destination, the general rule is that the party to whose default or act the delay is due will have to bear the costs incurred thereby. But if the delay is caused by some unforeseen and unavoidable occurrence, the freight is payable in full.

Delay.

As special instances in which the costs of delay fall upon the charterer may be mentioned:—

When charterer pays for delay.

1. If he has shipped goods which are forbidden to be shipped, and thus caused the detention of the vessel at the port of loading.

2. If, in time of war, he has shipped goods that come under the category of contraband of war, and the vessel has in consequence been delayed on the voyage.
3. If he has shipped goods forbidden to be imported at the port of unloading, and in consequence the unloading is delayed or rendered impossible.

When captain responsible for delay.

The costs of delay fall upon the captain:—

1. If he does not start at the proper time, owing to his own default.
2. If, during the voyage, he unnecessarily makes port, or is stopped for want of proper papers.
If he knowingly has taken on board contraband goods from the consignor, the costs of delay attending their seizure are divided between the captain and the consignor.
3. If, at the port of unloading, he has not immediately complied with all formalities required by the laws of the country in order to effect his unloading.

Necessary formalities to charge captain.

In order to charge the captain with damages for delay, either at the port of starting or of his destination, a formal claim against him must be made by the ordinary legal process, unless in the case where a fixed sum per day has been agreed upon by the charter-party by way of demurrage.

Accidents at sea.

If repairs become necessary during the voyage in consequence of accidents at sea, the charterer has no claim for the delay, and if he decide to tranship his goods, he must first pay the freight. On the other hand, if the repairs are necessary before starting and after the signing of the charter-party, *owing to the bad condition of the ship*, the charterer may unship his cargo and also sue the captain for damages sustained; if necessary before starting, *owing to some accidental occurrence*, the charterer may unship his cargo, but must pay either the whole or half of the freight, according to circumstances.

Effect of clause of exemption from liability from accidents.

The *certificat de visite* is no protection to the captain or owner against a claim for damages arising from delay caused by the detention of the ship during the voyage for repairs, if it can be shown that the defects existed at the time when the certificate was given. And a clause in the charter-party, expressly releasing the captain or owner from liability with respect to accidents of all kinds, does not exempt them from an action for damages when the unseaworthiness existed at the time of starting.

When the delay necessitated by repairs would result in the Transshipment, loss of the cargo (*e.g.*, goods of a perishable nature), the consignor may tranship them on paying a proportionate freight for the part of the voyage then accomplished.

It should be added, that all interested parties who knowingly allow a vessel to start in an unseaworthy condition are liable to be proceeded against criminally. Criminal proceedings.

In case of the ship chartered becoming so disabled as to be incapable of repairs, the captain is bound to engage another ship; if he succeed in doing so, he earns his whole freight, but he cannot claim even a proportionate amount, in case of failure to obtain another ship, unless he has been absolutely and unavoidably prevented from obtaining it. Disablement of the ship.

If the second ship can only be engaged at a higher price than that agreed on by the original charter-party, the consignor will have to pay the difference to the captain.

If the particular port of destination is blockaded, the captain is bound to proceed to the nearest open port of the same country, and is entitled to a proportionate increase of freight for the extended voyage; and if all the ports of that country are under blockade, he should proceed to the nearest port of another country, or even return. He alone is judge of the best course to be taken in the interests of the cargo entrusted to him. Duties of the captain in case of blockade.

3. When the goods do not reach their destination.—If this arises from the default of the charterer, owing to his shipping an incomplete cargo, he must pay the freight that would be due on a full cargo; but if, after signing the charter-party, he supplies no cargo, he is only liable to pay half freight. On his side the captain is bound to make formal claim in the legal manner before leaving with an incomplete cargo. Default of the charterer in not shipping a full cargo.

If the merchant withdraws the cargo during the voyage, he is liable for the whole freight due on the entire voyage, and also for the costs of unloading, and any additional expenses caused thereby. But the privileges granted to the captain by Art. 307 of the Code of Commerce only extend in respect of the portion of the freight earned by that part of the voyage actually performed; that is, his lien for that portion only will extend for a fortnight after delivery of the goods, if they have not been transferred during that time to a third party. Withdrawal of cargo during the voyage.

For the surplus he must sue the charterer.

Rule on sale of
damaged goods.

If, during the voyage, goods become so damaged that the captain is compelled to sell them, the established principle as to his right to the entire freight is as follows: If the captain is directly or indirectly to blame for the damage, the loss falls upon him; if the damage is due to *force majeure*, the whole freight is due. But if the loss of the cargo is complete, so that no compensation at all is made to the merchant, *e.g.*, by shipwreck or capture, and generally speaking by accident, no freight is payable; and in case of recapture or salvage from the wreck, freight is due for the part of the voyage performed.

Abandonment
of vessel.

In the case of a ship abandoned at sea by its crew and taken to its destination by salvors, if the consignee of the goods receives them subject to a payment to the salvors of one-third of their value, the captain can only claim from him two-thirds of his freight.

Jettison.

If goods are jettisoned for the benefit of the general safety of the ship or the rest of the cargo, the captain receives freight for them by way of general average; and the owners of the goods saved and the shipowner contribute to indemnify the owners of the goods jettisoned. But no claim for freight can be made on account of goods loaded on deck and jettisoned, even if such freight has been specially stipulated for in the charter-party.

Duration of
liability.

Lastly, the liability to risks by sea remains until the cargo is actually unloaded from the vessel. If, therefore, the cargo is lost by the foundering of the ship when in port, no freight is due except upon such part of the cargo as is saved.

Execution of the Contract.

Default of the
charterer, total
and partial.

If a merchant or consignor of goods, after entering into a contract or charter-party, refuses to comply with it by furnishing any cargo, he must pay the captain an indemnity, fixed by law at one-half of the freight agreed upon. If he has furnished only a part of the cargo, the whole freight will be due.

In the case of a
general ship.

In the case of a general ship (*à cuillette*), there is an exception to this rule. The consignee of goods on a general ship may break the contract after furnishing a part only of his cargo, on payment of one-half of the freight which he agreed to pay.

Effect of
declaration of
hostilities.

If, before the vessel starts, there is a prohibition of commerce with the country to which the cargo was destined, the

contract is thereby cancelled, and no claim for damages can be sustained by any of the parties. The consignor has to bear the loss of loading and unloading of his cargo. Such cancelling of the contract takes place if, *e.g.*, hostilities have begun between the two countries from and to whose ports the vessel is to sail; if the vessel is detained by order of the Government when loading in a French port; if the cargo consists of goods the export of which has been forbidden after the arrival of the vessel at its port of loading. In all such cases the contract is, *ipso facto*, cancelled. Cancelling of the contract.

In the case of unavoidable occurrences, which delay for a time the starting of the vessel, *e.g.*, the existence of contrary winds or delay caused by the Custom House officers, the contract remains in force; and neither party has any claim to damages. But such unavoidable occurrences must be such as were entirely beyond the control of the parties; for if a charter-party is signed for the transport of a cargo to a port, which in all probability will or may be closed by ice before the vessel arrives there, and if the vessel consequently does not start, the contract is not thereby cancelled, but the consignor is liable to pay half the freight. *Vis major.*

Rights of Action.

The right to sue for payment of freight becomes due—At what time freight becomes payable.
 1. When the cargo has arrived at its destination, unless the contract is for payment in advance; 2. When the consignor withdraws his cargo before or during the voyage; 3. When the ship becomes disabled by perils of the sea, and the captain is unable to procure another vessel on to which he can transship the goods.

The captain who has entered into the contract has power to sue for payment, to receive the freight, and to give a receipt for it. This right, at the same time, belongs to the owners of the ship. During the voyage all actions in respect of the equipment of the vessel belong to the captain. Persons who may sue.

The Tribunals of Commerce can adjudicate on any action relating to the payment of freight. Interest on the freight claimed in a suit begins to accrue from the date of the commencement of the action. Jurisdiction of the Courts.

The captain's lien upon the cargo for payment of his freight extends for a fortnight after delivery, provided that the cargo has not during that time passed into the hands of other parties, who must be *bonâ fide* purchasers or assigns, and Lien of the captain.

must have received actual delivery of the goods. But if the goods have in the meantime lost their identity—as *e. g.*, if they consist of raw material converted during that period into manufactured articles—his lien is gone; and the captain must not have either expressly or tacitly renounced his lien.

If the entire freight is due for goods taken out of the ship during the voyage, the captain's lien only extends to the proportional freight for the part of the voyage completed. He must bring an action for the remainder.

Bankruptcy of
consignor.

If the consignors, or those who claim the cargo, become bankrupt before the fortnight expires, the captain's lien is a preferential claim that takes precedence of all other creditors.

Limitation of
actions.

All actions in respect of freight must be brought within one year from the termination of the voyage.

Bills of Lading.

Characteristics
of a bill of
lading;

A bill of lading, a form of which is added below, is a document signed by the captain of a vessel or someone on his behalf, acknowledging the receipt of goods or a cargo on board. It differs from a charter-party in that the latter contains the contract for the hire of the vessel, while the signed bill of lading is evidence that the cargo has been shipped. As supplementary to the charter-party, it shows that the contract of affreightment has been carried out.

its form ;

A bill of lading may be drawn either to bearer generally or to order, or to a specified person. The form in France varies according to the port of lading, many French ports having a customary form of their own. The contents, however, should be the same in all ; thus, there should be expressed—

its contents.

1. The nature, quantity, kinds, and quality of the goods ;
2. The name of the consignor, the name and address of the consignee, and the name and domicile of the captain ;
3. The name and tonnage of the ship ;
4. The port of departure and of destination ;
5. The price agreed upon as freight ;
6. And, in the margin, the marks and numbers of the consignments.

It is obvious that these points, though useful for identifying both goods and parties, are not absolutely necessary in all cases. Thus, a bill drawn to bearer can have no name of a consignee, although this is expressly required by the Code of

Commerce. But the name of the consignor is indispensable, as it may be necessary in certain cases to have recourse to him.

The document must be on stamped paper, and executed in four originals at least. These are all signed within 24 hours after the completion of the lading by the consignor and the captain. One of these originals is delivered to the consignor, the second is for the consignee, the third for the captain, and the fourth for the shipowner, in order to enable him to settle his accounts with the captain. It is usual, and even in accordance with strict law, that if several copies of the bill are drawn up, the number so drawn should be stated on each.

Bill of lading—
number of
originals.

The duty of presenting the bill of lading to the captain devolves upon the consignor. The captain is not bound to go to the consignor for the purpose of signing the bill of lading; and if any delay in carrying this out is caused by the consignor, he is answerable in damages to the captain. Without the signature of the captain the instrument is absolutely void. By the Ordonnance of 1681, if the consignor were a relative of the captain, and within the degree of relations whose testimony was prohibited in favour of each other, it was necessary that the bill should be initialled by the French consul in a foreign country, or by one of the chief owners of the ship in France. This regulation should be still observed; and in order to avoid any suspicion of fraud or collusion, it is better to have the bill signed by one or two of the principal officers of the crew as well. If the regulation of 1681 is not observed, a bill of lading, with the signature of the captain only, would not be accepted as evidence in case of loss by jettison or shipwreck.

Consignor's
duties in respect
of the bill of
lading;

signatures.

Foreign bills of lading are not subject to French law, nor is the captain signing a foreign bill compelled to be assisted by an interpreter, as in the case of a charter-party.

Foreign bills.

Transfer of Bill of Lading.

If the instrument is to bearer, the holder is entitled to the goods in accordance with the terms of the instrument. A bill drawn simply "to order," with no consignee named, is on the same footing as one drawn "to bearer."

Transfer of the
bill.

The nature of the bill of lading is not changed by an indorsement in blank. This question, which was decided by the Court of Cassation, arose in reference to a bill of lading drawn in England and made out, according to English custom, *to order or assigns*.

Indorsement in
blank.

Assignment of
the bill.

If the instrument is made out to a specified person, and by him transferred to a third party, the transfer should be effected by an *acte de cession* and notified to the captain. In this case the transferee takes subject to the liabilities of his transferor, and an unpaid vendor can exercise against him all the rights that he had against the transferor.

Bill "to order."

A bill of lading "to order" is transferable by indorsement, and has the quality of a bill of exchange; provided always that it has the conditions to which a bill of exchange is subject, that is, it must be dated, must state the value, and also the name of the party to whose order it is given.

Informal in-
dorsement.

Irregular indorsement does not transfer the property, though it may act as a *procuration*: and even if by the law of a foreign country such indorsement transferred the property, this will not be the result if the assignment to a third party were made in France. Further, if the indorser in such a case become bankrupt, the holder of the bill irregularly indorsed cannot dispose of it.

A regular indorsement transfers the property in the goods named in the instrument.

Stoppage *in
transitu*.

In certain cases, the original vendor has a right analogous to the English stoppage *in transitu*, by which he can claim the goods in the event of the bankruptcy of the purchaser; and if the purchaser has transferred the goods to a third party, without assigning also to him the bill of lading and an invoice of the goods, this vendor's right remains. But if the vendor has indorsed the bill to his purchaser, then, in the event of the latter's bankruptcy after assignment to a third party, who has taken the goods *bonâ fide*, the vendor must indemnify the third party for any advances made by him before exercising this right to claim the goods.

Rights of the
holder.

It follows that the holder of a properly indorsed bill of lading may deal with the goods comprised in it as owner of them.

Consignor's
lien.

The vendor's lien does not extend to third parties claiming through him. A re-sale by the buyer defeats their rights, and is not impeachable.

Duty of the
captain as to
delivery of
goods.

The captain is bound to deliver the goods to the person who holds a regularly indorsed bill of lading. It is not part of his duty to examine whether the holder is in point of fact beneficially entitled. No *oppositions* can stop the delivery of the goods, unless the ground for them is that the bill of lading has

been lost, and if the consignor wish to withdraw the goods during the voyage, the captain must refuse to allow him to do so, unless he produces and gives up all the copies of the bill of lading which the captain had signed.

Freight and other dues must in all cases be paid before delivery of the goods can be demanded.

As to a transfer by a practically insolvent holder : if the transfer (by indorsement) is made after suspending payment, the unpaid vendor can follow the goods into the hands of the transferee, it being incumbent on the vendor to prove that the transferee was aware of the insolvency of his transferor.

Effect of holder becoming bankrupt.

Effects of a Bill of Lading.

If duly drawn and signed, the bill of lading is evidence as between all parties concerned and as against the insurers ; but proof is admitted on the part of insurers or third parties to show that it is not a genuine document. It imposes on the captain the duty of delivering the goods as named in it, in the same condition as they were shipped, subject of course to unavoidable damage or loss by perils of the sea. The usual practice, for the captain's protection, is to insert at the foot of the instrument the words *sans approuver* or *que dit être* ; by this addition, the captain expresses that he does not guarantee the weight or quantity, &c., stated by the consignor. If the consignor refuses to allow this qualification, he is bound to have the quantity and quality, &c. verified at his own cost before the voyage. But no further limitation of his liability is allowed to the captain : *e.g.*, he cannot disclaim responsibility for any default of himself or his crew. On the other hand, the shipowner can refuse to be responsible for default of the captain or crew.

Effect of the bill.

Usual provisions.

The obligation to have on board the bills of lading of goods consigned is imperative on the captain ; therefore, if he has lost them, he is responsible to the consignors for the value of the goods.

If there is a difference between the charter-party and the bill of lading with respect to the freight of the goods, the Court will decide any dispute that may arise by investigating the circumstances of each case. The question thus becomes one of fact and of the intention of the parties.

Conflict between charter-party and bill of lading.

Delivery of the Goods.

Delivery at port of unloading.

On arrival at the port of unloading, the captain's duty is to hand over the goods to the consignee named in the bill of lading. He is bound not to cause any delay in unloading them, nor can he refuse delivery on the ground that the consignor forbids it; in fact, nothing but an execution issued against the goods can stop their delivery.

Duties of the captain towards the consignee.

It is also the duty of the captain to inform the consignee of his arrival, in order that the latter may claim the goods, or if the bill of lading is to bearer or order, without naming any definite consignee, he must, in that case, publish the fact of his arrival, &c., in the local newspapers.

Demurrage.

Any delay in accepting delivery on the part of the consignee renders him liable to demurrage, which is usually fixed by the charter-party.

Adverse claimants.

If two persons, claiming as consignees, and holding bills of lading for the same goods, demand them from the captain, the proper course for him is to refrain from making delivery to either until their rights have been settled by a decision of the Court. On effecting delivery, if there has been any dispute, the practice is for the consignee to indorse a receipt for the goods upon his copy of the bill and to hand it to the captain, who, in return, hands over his copy with an indorsement of the receipt of the freight.

Limitation of actions.

No action can be brought by the consignor in respect of goods contained in the bill of lading after the expiration of one year from the arrival of the vessel at its destination.

Stamps.

The stamp on a bill of lading is two francs. This is stamped on the captain's copy, the others being stamped at the same time with a stamp mark containing no indication of value.

Stamps on foreign bills.

Foreign bills of lading, before being used in France, must be stamped according to French law; this is done by affixing an adhesive stamp to the copyhold by the captain.

On copies.

Copies over and above the four originals in which the instrument is executed are chargeable with a duty of 50 centimes.

Penalties.

The fine for drawing a bill of lading without a proper stamp is 50 fs.; and for not exhibiting a bill of lading to the custom house officers, from 100 to 600 fs.

There is no *ad valorem* duty on bills of lading, whatever be the value they represent.

Form of a Charter-party.

Marseilles, the 1st day of January, One thousand eight hundred and eighty-one, Captain _____ commanding the _____ named _____ registering _____ tons, now lying at _____ has chartered, with the authorisation of Mr. _____ to Mr. _____

merchant in this town, his said ship to the full extent of its capacity, without regard to its measurement; for _____ intended to take a full and complete cargo in _____ and to convey it _____ at the price and subject to the clauses and conditions following:—

Art. 1.—The captain shall have his ship in good condition, equipped and furnished with all requisites, and fit to make the intended voyage; and this shall be declared by the certificate of inspection.

Art. 2.—To carry out the loading and unloading of the said ship, the captain allows Mr. _____ charterer, or his correspondent _____ running days or *staries reversibles*, which shall begin to run at the port of loading from the day after his arrival there ready to load, and end the day on which the loading is completed; and to begin again at the port of unloading on the day after he is admitted to the port, and is ready to unload.

Art. 3.—If at the port of loading or unloading there is need of running days, or days of demurrage, the captain is bound to allow them, on payment to him at that place _____ French money, or its equivalent value, for every day.

Art. 4.—When the lay days and days of demurrage have expired at the port of loading, the captain, after fulfilling all necessary formalities, shall be at liberty to sail to his destination; and in the event of safe arrival there, the deficit of the cargo (if any) shall be paid for as though he had a full cargo.

Art. 5.—Loading and unloading to be effected according to local customs, and porters to be at the expense of Mr. _____ the charterer.

Art. 6.—During the now intended voyage the captain shall pay all expenses and duties on his ship, and Mr. _____ the charterer, all expenses on the cargo.

Art. 7.—The said captain is forbidden to take on board goods belonging to other persons than Mr. _____, the charterer, or Mr. _____, his correspondent, without leave from them in writing, under penalty of forfeiting half his freight. The captain undertakes to sail within 24 hours after receiving the last consignments from Mr. _____, the charterer, or Mr. _____, his correspondent, weather permitting; and to proceed straight to his destination without entering any other port, unless compelled to do so; and if so compelled, he undertakes not to load or unload anything there, under penalty of paying all damages and interest, except in the event of overwhelming necessity legally certified.

Art. 8.—The captain shall sign the bills of lading, whatever freight may be stipulated in them, and shall only have a claim to the freight stated in Art. 9, whether more or less than that stated in the bills of lading.

Art. 9.—The present affreightment is made and agreed at _____, and for _____ per cent. primage _____, the whole to be paid in cash after the unloading is completed.

Art. 10.—The _____ and boards necessary for the safe-keeping of the cargo shall be provided by _____.

Art. 11.—Payment shall be made to the captain at _____ on account of his freight, to the amount of _____ francs, leaving to him only the expense of the insurance premium.

Art. 12.—On arrival at the port of unloading, the captain shall notify his vessel and the cargo to Mr. _____, the charterer, or to Mr. _____, his correspondent.

(Signed)

PATENTS AND TRADE MARKS.

PATENTS.

The rights of patentees and inventors are regulated by a law of 1844, which consolidated and amended the various enactments passed on this subject during the period from 1791 to 1807.

Every new discovery relating to industry confers upon its author, subject to the conditions and the periods hereinafter stated, the exclusive right to work the said discovery or invention for his own benefit.

The following are considered as inventions or new discoveries for which patents may be granted :—

1. The invention of new industrial products.
2. The invention of new means, or a new application of known means for obtaining an industrial product or result.

Medical compositions and medicines of every kind, as also plans and combinations of credit or finance, cannot be patented. The decree of August 18th, 1810, regulates the production of medicines.

Patents are granted in France for a period of five, ten or fifteen years. The fees payable in each case are :—

| | | | | |
|-------------------------|-----|-----|-----------|-------|
| For a patent of 5 years | ... | ... | 500 fs. | Fees. |
| „ 10 years | ... | ... | 1,000 fs. | |
| „ 15 years | ... | ... | 1,500 fs. | |

These fees are payable by annual sums of 100 fs. The patent is forfeited if the patentee allows a term to pass without payment of the instalment then due.

FORMALITIES ATTENDING THE TAKING OUT OF PATENTS.

**Documents to
be deposited.**

In order to obtain a patent, the applicant must deposit under seal, at the office of the Secretary of the *Préfecture* in the department in which he is domiciled, or in any other department after having elected domicile therein—

1. His petition to the Minister of Agriculture and Commerce.
2. A description of the discovery, invention, or application that forms the subject of the patent.
3. Any drawings or samples necessary to the elucidation of the description given.
4. A schedule of the documents deposited.

The application must not be for more than one patent. It must also mention the period for which the petitioner desires to have the patent granted, within the limits above prescribed. No conditions, restrictions, or reservations may be included in the form of petition.

Specification.

The title of the object for which a patent is required must be designated by a summary and precise description of the invention. Great care and accuracy must be observed in the wording of the petition; foreign words must not be used, and no alterations or erasures are allowed. Drawings must be traced in ink according to the metric scale; and duplicates of these drawings and of the description must be annexed to the petition.

If the petitioner applies in person, he must sign his name to all the documents employed.

Agent.

If he applies by his agent, the agent must be duly authorised* by procuration, and the procuration must be annexed to the petition.

First duty.

With the deposit of the documents and petition must be filed a receipt showing that the applicant has already paid 100 fs. on account of the whole fee due for the patent. Without this receipt no deposit is accepted.

**Certificate of
application.**

The Secretary-General of the *Préfecture* draws up a certificate (for which no fee is charged) upon a register kept for that purpose; this certificate states the day and hour when the deposit was made, and when signed by the petitioner is evidence of the deposit. The petitioner can take a copy of it

* See Form.

on paying the stamp duty. The patent begins to run from the date of the deposit of the petition.

Any person other than the patentee may obtain a patent for an improvement on the article patented, but he cannot work it until the period for which the original patentee holds has expired. If the original patentee applies within a year from the date of the deposit for a patent for the same improvement, he has a right of priority over all other applicants. The petitions of parties other than the original patentee are therefore deposited under seal, and are not opened until after the expiration of the year during which the rights of priority remain in the original patentee. Rights of improvers.

DELIVERY OF THE PATENT.

When the petition has been properly made, and all the documents duly deposited, the patent is delivered to the petitioner. This delivery merely indicates the fact that the deposit has been made and the patent granted; the Government does not thereby guarantee anything to the patentee, neither the existence, novelty, or merit of the invention, nor the fidelity and accuracy of the description. It is delivered solely at the risk of the petitioner, and therefore the words *sans garantie du Gouvernement* (s. g. d. g.) are required by law to be affixed to all patented articles. Effect of delivery of patent.

The decree delivered by the *Ministère* to the petitioner, fixing the regularity of his demand, is that which constitutes his patent.

Every three months a statement of all patents delivered within that period is published in the *Bulletin des Lois*. Publication of patents.

The period for which a patent is granted can only be extended by a special law.

INFRINGEMENT—PROCEEDINGS AND PENALTIES.

Any violation of the rights of the patentee is an offence punishable by a fine of 100 to 2,000 fs. If the offence is repeated, a penalty of imprisonment for a term of not less than one and not more than six months, may be pronounced, in addition to the imposition of the prescribed fine. The offence is considered to be repeated if the offender has been convicted within the previous five years of the same offence. Penalties for infringement.

Imprisonment for the terms specified above may be inflicted if the person infringing be a workman or *employé* who has Penalties on employés.

worked in the factory or establishment of the patentee, or if the infringer has associated himself with such *employé*, or obtained from him knowledge of the details comprised in the patent. In the latter case, the *employé* may be prosecuted as an accomplice.

Action for
repeal or
forfeiture.

Actions for repeal or forfeiture of the patent must be brought before the civil Courts in a Court of First Instance; other actions, involving penalties, come before the *Tribunal Correctionnel*, which has in all cases a right, after action once brought, to decide upon the defences pleaded by the defendant, either as regards the repeal or forfeiture of the patent, or upon questions relating to property in the said patent.

Search warrant.

Further, the patentee can obtain from a Court of First Instance an order for a search warrant, and may proceed by means of a *huissier* to designate in detail, with or without seizure, the objects which are alleged to infringe the patent.

Security re-
quired from
plaintiff.

If an application is made for an order of seizure, the order may require the plaintiff to furnish security, and to pay the amount required into the *Caisse des Consignations* before proceeding further. The plaintiff must prosecute within eight days, otherwise the seizure becomes void.

THE RIGHTS OF FOREIGNERS.

Foreign patents
in France

An Englishman or foreigner can obtain a patent in France upon compliance with the usual formalities and conditions.

The author of an invention or discovery already patented abroad can obtain a patent for it in France. This kind of patent is called *brevet d'importation*. The duration of the French patent will be the same as that of the foreign patent, unless the duration of the foreign patent exceeds 15 years, as in France the maximum duration of patents is only 15 years. Therefore a *brevet d'importation*, taken out in France, based on an English patent, lasts 14 years only, as in England patents are only granted for 14 years.

Requisites for
grant of foreign
patent.

A foreigner having obtained a patent abroad can obtain a French patent. A patentee having obtained a patent abroad cannot obtain a *brevet d'importation* in France unless his invention is new. Thus, a patentee out of France who works his patent before applying for a French patent, or who, without working it, publishes a specification as in England, cannot obtain a valid patent in France; therefore a *brevet d'importation* should be taken out in France upon a date approaching as

nearly as possible that upon which the foreign patent is granted; any delay is dangerous.

The existence of a *brevet d'importation* depends upon a prior patent; therefore, if the prior patent is cancelled, the *brevet d'importation* also falls to the ground or becomes void. (Cassation, 14th January, 1864.) We should also repeat that a foreigner, suing for infringement of a patent, must furnish security when he seizes the goods in the hands of the infringer, as a preliminary to subsequent proceedings. He must also furnish security for costs at the time when his action is brought before the Court, if the defendant demands. Such security for costs is quite distinct from the security to be furnished upon seizure above mentioned.

A patent, like all other property of the inventor, is an asset which his creditors may seize, with the patented articles and the property in the patent. The proper method is by *saisie-arrêt*, and not by execution and distraint, the theory being that the patent is in the hands of the Government. If sold, the sale of the patent must be made in the presence of a notary.

Foreigner
plaintiff.

Patents can be
seized and
attached.

FORM of a Pouvoir.

Jc, soussigné "A. B."

Form of procu-
ration to take
out patent.

Désirant obtenir un brevet

Donne pouvoir à "C. D."

de pour moi et en mon nom, tant en ma présence qu'en mon absence, présenter à Son Excellence le Ministre de l'Agriculture, du Commerce et des Travaux Publics ou à toute autre autorité légale, toute requête, pétition et demande, dresser et signer tous procès-verbaux et déclarations; déposer, rectifier et signer tous mémoires, dessins et documents, contracter tout engagement et faire généralement tout ce qui sera nécessaire dans mon intérêt pour l'obtention du dit Brevet comme je le ferais moi-même si j'étais présent, promettant de ratifier et d'approuver, tout comme de fait je ratifie et approuve tout ce que et quoi mon dit Fondé de pouvoir jugera convenable de faire pour l'exécution pleine et entière des présentes.

"A. B."

REGULATIONS IN RESPECT OF PATENTS ISSUED BY THE MINISTER OF AGRICULTURE AND COMMERCE.

1.—*Duration and Duties.*

Rules and
regulations.

Patents are granted for a period of 5, 10, or 15 years, as the inventors require. The duration of the patent runs from the day when the application is deposited; it can only be extended by a special enactment of the Legislature. Each patent is subject to a duty of 100 fs., payable annually, under pain of forfeiture if the patentee does not pay this duty before the beginning of each year during which his patent lasts.

II.—*What cannot be Patented.*

No patent will be granted for—

Medicinal compositions or medicines of any kind; these remain under the special laws and regulations that deal with them, in particular the decree of 18th August, 1810, dealing with secret remedies.

Proposals and combinations of credit or finance. (Law of 5th July, 1844, Art. 3.)

III.—*Formalities to be observed.*

Formalities.

Any person may take out a patent of invention, provided the following formalities have been observed:—A sum of 100 fs. must be first paid in at Paris with the Collector-General of the Finances of the Seine, and in the departments, with the collectors of finance. The payment of this amount, which constitutes the first yearly charge payable, is acknowledged by a receipt granted by the collector. The next step is for the applicant to go to the General Secretary's office of the department in which he is domiciled (or of another department, if the applicant elects domicile therein), and to deposit, together with the receipt for the first annual payment, a sealed packet containing—

Sealed packet.

1. An application to the Minister of Agriculture and Commerce.
2. A description of the invention.
3. The drawings necessary to explain the description.
4. A schedule of the papers deposited.

If an agent is to take out the patent, or merely to make this deposit of papers, he must make an exhibit of the power granted to him, and deposit it also.

The application must be confined to one principal object, together with the details of which it consists, and the purposes for which it is intended, and it must not contain any limitations, conditions or reservations. If these rules are not complied with the application is dismissed. (Law of July 5th, 1844, Arts. 6 & 12.) Law of 1844 on patents.

The description must be supplied in duplicate, one being the original and one the copy. The original should be marked at the top "Original," and the copy "Duplicata." If the two do not correspond exactly, or if the original is not so marked, the application is dismissed. It will also be dismissed if the description is written in a foreign language. (Law as above.)

Two sets of drawings must also be supplied, an original and a copy. The original must be marked at the top "Original," and the copy "Duplicate." If the two do not exactly correspond, or if the original is not so marked, the application will be dismissed. It will also be dismissed if the drawings are made in pencil. (Law as above.)

If the applicant intends to add to the drawing any explanatory words, he must insert them in the margin, both in the original and on the copy. If the two sets of explanatory words do not correspond, and if the original is not so marked, the application is dismissed. It will also be if the words are in a foreign language. (Law as above.)

It is necessary to specify in the application the duration required for the patent by selecting one of the periods fixed by the law, and also to express in a concise and exact manner the object of the invention.

The description must not contain any erasure, interlineation, or any alteration whatever, or any expression of weights or measures except those based on the metric system. Any words struck out must be counted and specified.

The original and the duplicate must be signed by the inventor or his authorised agent.

Drawings must be made in ink, according to the metric scale. They must not contain any erasure, interlineation, or any alteration whatever, or any expression of measures except those based on the metric system. The original and the duplicate must be signed by the inventor or his authorised agent. Neither these signatures, nor those appended to the description, are to be legalised. Drawings must be in ink.

The explanatory words must not contain any erasure, inter-

lineation, or any alteration whatever, or words interlined, or any expression of weights or measures except those based on the metric system. Words struck out must be counted and specified, and pages and notes initialled.

A sufficient margin for the remarks which are to be entered by the authorities must be left in the descriptions, drawings, and explanations.

The object of the invention must be specified in the same manner in the application and in the abstract of the deposit. These two papers must also specify the same owner and the same duration for the patent.

Any neglect to comply with the formalities above prescribed may, according to circumstances, entail the dismissal of the application.

Samples, patterns, or models which the inventors consider necessary for a proper understanding of the description, must be deposited at the same time as the packet mentioned above, but in a different sealed packet.

If the samples, patterns, or models are too cumbersome to be sent by post, they must be brought in a wooden box, provided and closed by the person making the deposit.

The deposit is certified by a formal document (*procès-verbal*), which is transmitted to the applicant on receipt of the necessary postage.

IV.—*Rights of Foreigners.*

Rights of
foreigners.

Foreigners can take out patents in France. Further, the author of an invention or discovery already patented abroad can take out a patent for it in France; the period for which it can be taken is in no case to exceed that for which the previous foreign patent has been granted.

For this purpose, the inventor should give authority to a person residing in France to apply for the patent in his name (the inventor's), or merely to see to the deposit of documents, as specified in paragraph 3 of the present notice.

V.—*Grant of Patents.*

Grant of
patents.

Patents for which the application has been made in due form, are granted without previous examination of them, at the risk and peril of the patentees, and without guarantee either of the genuineness, novelty, or value of the invention, or of the truth or accuracy of the description; the grant of the patent does not release the owner from the observance of any law or any regulation.

Patents are granted in the order of the applications made at the office.

VI.—*Changes, Improvements, or Additions to Patents.*

The patentee or his assigns, during the specified period, may reserve to themselves the exclusive right to carry out, for their own profit, any alterations, improvements or additions to the patent, by obtaining a grant of a "certificate of addition." The formalities are the same as for applications for patents, except that the only charge for the certificate is a special duty of 20 fs. Each "certificate of addition" operates from the date of the deposit and ceases with the patent. Certificates of addition taken out by one of the assigns enure to all the others.

Changes, improvements and additions.

Every patentee may also take out, instead of a certificate of addition, which expires with the original patent, a second original patent, for five, ten, or fifteen years, for an alteration, improvement, or addition. The formalities are the same as for an ordinary patent.

Any other person may also take out a patent for an alteration, improvement, or addition to the invention already patented. But the original patentee has a preference for alterations, improvements, or additions for which he has taken out during the first year a patent or a "certificate of addition."

VII.—*What Patents are void.*

Patents delivered under the following circumstances are void :—1. If the discovery, invention, or process is not new; 2. If the discovery, invention, or process consists either of a medicinal compound or any kind of medicine, or of a proposal or combination of credit or finance; 3. If the patents deal with purely theoretical or scientific principles, methods, systems, discoveries, or ideas, without specifying any commercial application of the same; 4. If the discovery, invention, or process is opposed to public order or safety, or to morality and the laws of the State, without prejudice to the penalties which might be incurred by the manufacture or exposure for sale of prohibited articles; 5. If the title under which the patent is applied for fraudulently specifies an article different from the article invented; 6. If the description attached to the patent is not sufficient for the execution, or if it does not express in a complete, honest and straightforward manner the real process used by the inventor; 7. If the patent

Patents, when void.

has been taken within the year for an alteration, improvement, or addition to a patent taken by another person, and the latter has within the proper time availed himself of the preference granted to him by Art. 18 of the Law of July 5th, 1844. Certificates dealing with alterations, improvements, or additions which are not connected with the principal patent, are also void.

A discovery, invention, or process which, in France or abroad, and previous to the date of the deposit of the application, has been made sufficiently public to be executed, is not reckoned as new.

VIII.—*Forfeitures.*

Patents, when
forfeited.

All rights are forfeited by:—1. A patentee who has not made his annual payment before the beginning of each year of the duration of his patent. 2. A patentee who has not put in working order his discovery, invention or process in France, within two years from the date of the grant of the patent, or who has ceased to work his patent for two consecutive years, unless in either case he gives sufficient reasons for his conduct. 3. A patentee who has introduced into France articles manufactured abroad and similar to those protected by his patent.

The Minister of Agriculture and Commerce has power to authorise the introduction of models of machinery and of articles manufactured abroad for the purpose of being exhibited at the public exhibitions, or at trials made with the permission of the Government.

IX.—*Copies and Publications.*

Copies and
specifications.

Any person may obtain a copy of a description relative to a patent by applying for it to the Minister and forwarding to him the duty of 25 fs., paid like the duty on the patent. For a copy of a description relative to a certificate of addition the application should be accompanied by a remittance of a duty of 20 fs. Persons requiring copies of drawings must come to the office and make them in person, or send some one at their own expense to take copies. Descriptions, drawings and models of the patents granted remain deposited at the office of the Minister of Agriculture and Commerce until the expiration of the patent, and are filed there free of expense. Descriptions and drawings of expired patents are to be found at the Conservatoire of Arts and Trades.—*May, 1880.*

TRADE MARKS.

The law which at present regulates trade marks in France Law of 1857. was passed in 1857. Previous legislation was, in early times, both severe in its penalties and injurious to trade, while the disconnected attempts made since 1789 to deal with the subject, resulted in an incoherent mass of unsatisfactory enactments.

Compulsory marks are required by statute to be used by printers, jewellers and goldsmiths, playing-card makers, gun-makers and some others. Other manufacturers may affix a trade mark to the goods which they produce. It is intended to guarantee to the consumer the quality and the origin of the articles sold. Compulsory marks.

The requisites of a trade mark are that it should be both new and distinctive.

A trade mark used in a foreign country, unless protected in France by treaty or special legislation, may be used as a new mark by a manufacturer in France. Names, initials, and almost any words, may be used as a trade mark. Foreign trade marks.

Property in Trade Marks.

The first person who uses a specific mark has the property in it, and this property is protected by depositing (registering) the mark. It is preserved by use, and may be lost by non-user, but the non-user must be definite and not merely temporary. If a firm possess a trade mark, in the case of dissolution of partnership it should be sold by auction; otherwise, each member of the firm retains the right to use it, unless one of the conditions of the dissolution is that each partner reserves the right to continue in the same business, in which case the trade mark is extinguished. Property in trade mark, how preserved.

Transfer and Assignment of Trade Marks.

No formalities are necessary for this purpose. Though registration of the transfer is not compulsory, it is always desirable, in order to protect the transferee against other parties who may have obtained subsequent transfers. Assignment of trade mark.

A general sale or transfer of a business transfers any trade mark belonging to that business. Transfer of business.

Registration—Foreigners.

Foreigners who possess mercantile establishments in France enjoy, so far as regards the products of their manufactures, the same rights as Frenchmen concerning the deposit of their trade marks. Rights of foreigners.

Reciprocal
treaties.

But foreigners who carry on business out of France only do not possess the same privileges, unless the same facilities have, pursuant to laws or diplomatic conventions, been reciprocally granted to Frenchmen in their respective countries.

A foreigner or a foreign Company or firm, having only an agent in France, is not entitled to the above rights.

Certificate of
deposit.

The registration or deposit is made at the offices of the Civil Tribunal of the Seine in a special register, and the certificate of deposit sets out the country in which the commercial or agricultural establishment of the proprietor of the mark is situate, in addition to the treaties of reciprocity.

Registration.

It is effected by depositing two copies of the drawing or print representing the mark at the office of the Tribunal of Commerce of the district in which the manufacturer is domiciled: or, where there is no Tribunal of Commerce, at the office of the Civil Tribunal.

Agent.

The manufacturer, or his agent empowered by special authority, can effect the registration. The document authorising the agent should be under private seal, and registered.

Duration of
registration.

The registration, when effected, holds good for 15 years. It may be renewed at the expiration of that time. The effect of registration is to give the proprietor of the trade mark the right to prosecute fraudulent imitators. The effect of non-renewal after 15 years is to take away this right.

An English manufacturer cannot register a trade mark in France which has lapsed in England. (Court of Cassation, 21st March, 1874.)

A treaty for trade mark registration exists between England and France. (Treaty of 25th January, 1860.)

Infringements of Trade Marks.

Infringement.

The infringement of a registered trade mark is punishable by fine and imprisonment, by confiscation of the articles in which the infringement occurs, and by publication of the sentence and penalties inflicted.

By infringement is understood generally the substantial reproduction of the trade mark.

Fraud.

If the reproduction is such as is calculated to mislead the purchaser, although it does not correspond in detail to the original, the person so reproducing it is liable to the penalties for infringement. The infringement is a question of fact for the Court to decide.

Criminal pro-
ceedings

The remedy by criminal proceeding is open to the party

aggrieved, even if no actual loss has been sustained by him as a result of the infringement. If the infringement has been committed by a foreigner out of France, no penalty is entailed upon him unless he further commits the offence of introducing the spurious articles into France. On the other hand, the infringement of a French trade mark by a French subject in a foreign country is punishable in France, provided that the act is an offence in the country where it was committed.

Fraudulent imitation, the use or sale of an article bearing such fraudulent imitation, fraudulent use of a trade mark belonging to another, and similar offences, are punishable under the Law of 1857. Fraudulent imitation.

The remedy is by proceeding either before the Civil or *Correctionnel* Courts. Either the proprietor of the mark or the *Ministère public* can prosecute; and in respect of trade marks, the latter can prosecute without complaint from the proprietor. With regard to foreigners, they have no right of action unless the same right is reciprocally granted to Frenchmen by the Courts of the country to which the foreigner belongs. Who may prosecute.

Before proceeding by action, the proprietor of a trade mark can, on preferring a request in the prescribed form, obtain the seizure of the articles on which his trade mark is counterfeited, or his rights otherwise infringed. Seizure.

Civil suits must be brought before the civil Courts, and are of the nature of summary proceedings. The *Tribunals of Commerce* have no power to decide these cases. Jurisdiction.

A prosecution before the *Tribunal Correctionnel* may be instituted either in the place where the alleged offence was committed, or before the Court of the offender's domicile, or before the Court within whose jurisdiction he is found. Venue of prosecution.

Decisions of foreign Courts, *e.g.*, a judgment of an English Court declaring the trade mark of an English house of business null and void, cannot be pleaded by the defendant in a French Court. Foreign decisions.

In all cases the action must be brought within three years from the time when the right to bring it first accrued, *i.e.*, from the date of the infringement complained of. Each repetition of the infringement gives a fresh right of action. Limitation of actions.

The penalties for—

1. Producing or using a spurious trade mark ;

Penalties in criminal proceedings.

2. Fraudulently using a trade mark belonging to another person ;
 3. Knowingly selling or offering for sale articles with a spurious or fraudulently affixed trade mark ;
- are a fine of from 50 to 3,000 fs. and imprisonment for not less than three months and not more than three years, or one of these punishments.

And for—

1. Fraudulent imitation ;
 2. Use of marks intended to deceive the purchaser ;
 3. Knowingly selling articles with such marks ;
- a fine of not less than 50 and not more than 2,000 fs., imprisonment for not less than one month and not more than one year, or either of these punishments.

Other penalties, such as the loss of the right to vote in elections of Tribunals and Chambers of Commerce, &c., may be inflicted by the Court.

Remedies in
civil proceed-
ings.

The remedies in a civil action are—

Either (1) confiscation of the articles bearing the spurious or fraudulent mark and transfer of them to the injured party.

Or (2) damages.

Powers of the
Court.

The Courts have no power to order both of these remedies. The damages are assessed in all cases by the Courts, and all costs and expenses incurred by the injured party may be included in the assessment.

Stamps and
fees.

By a law of November 26th, 1873, the proprietor of a mark registered under the Law of 1857 can have a special stamp or mark, affixed by the State, upon the tickets, bands, envelopes, &c., which bear his trade mark, as a guarantee of its authenticity. Special fees, varying from one centime to a franc for each stamping, are to be paid.

Powers of
consuls.

Further, French consuls in foreign countries are qualified by certain clauses of this law to draw up official reports of the usurpation of trade marks and to forward them to the proper authorities.

Rights of
foreigners to
bring actions.

All rights of action above described may be exercised by a foreigner if the Courts of the country to which he belongs grant reciprocal rights to French subjects.

THE CODE OF COMMERCE.

BOOK I. OF COMMERCE IN GENERAL.

Law passed 10th September, 1807.*

TITLE I. OF TRADERS.

Art. 1.—All persons are traders who exercise acts of trade, and whose habitual employment such business constitutes.

Art. 2.—No emancipated minor (*mineur émancipé*) of the age of 18 years complete, who would avail himself of the power and faculty granted to him by Art. 487 of the Code Civil to carry on trade, can commence business or be reputed major as to obligations contracted by him in the way of trade, unless 1st, he shall have been previously authorised by his father, or in case of the decease, interdiction or absence of the father, by his mother, or, in default of the father and mother, by a resolution of the family council (*conseil de famille*) confirmed by the Tribunal Civil; and 2nd, that the deed empowering the minor to act shall have moreover been registered and posted up at the Tribunal de Commerce of the place where he wishes to establish his domicile.

* For *historique*, see “*Code de Commerce*.”

Art. 3.—The provisions contained in the preceding Article apply to minors even non-traders, as regards all proceedings declared to be acts of commerce by virtue of Arts. 632 and 633 of the present Code.

Art. 4.—No married woman can be a trader without the consent of her husband.

Art. 5.—If a married woman is a trader, she can, without the authority of her husband, bind herself for that which relates to her own business, and in the same case, if a *communauté de biens* exists between her and her husband, she can bind her husband also. She is not considered a trader when she merely retails the merchandise which belongs to her husband. She is accounted such only when she carries on a separate trade.

Art. 6.—Minors, being traders and authorised as hereinbefore mentioned, may burden and mortgage their real estates. They can even alienate them, but that only according to the forms prescribed by the 457th and succeeding Articles of the Code Civil.

Art. 7.—Married women, being traders, can in like manner burden, mortgage, and alienate their real estates. Nevertheless, their estate declared dotal when the parties are married under the *régime dotal* cannot be mortgaged nor alienated, except in the cases fixed and forms prescribed by the Code Civil.

TITLE II.

OF THE BOOKS REQUIRED TO BE KEPT BY TRADERS.

Art. 8.—Every trader is bound to keep a journal, which should exhibit day by day his debts and assets, the operations of his trade, his negotiations, acceptances, and endorsements of bills, and generally all that he receives or pays on any

account whatever; and should set out month by month the sums disbursed in housekeeping expenses; the above irrespective of the other books used in his trade, but which are not obligatory. He is required to file the letters which he receives, and to copy into a letter-book those which he sends.

Art. 9.—He must every year make and subscribe an inventory of his estate, both real and personal, and of his debts and assets, and copy the same year by year into a book especially appropriated for that purpose.

Art. 10.—The journal and inventory books shall be compared and revised once every year. The letter-book shall not be subject to this formality. The whole shall be kept in the order of the dates, without blanks or omissions or marginal additions.

Art. 11.—The books required to be kept by Arts. 8 and 9 shall be marked and signed in the margin, and examined either by one of the judges of the Tribunal de Commerce, or by the Mayor or his colleague, in the ordinary form, and without fee. Traders are bound to preserve their books for the space of 10 years.

Art. 12.—Business books, regularly kept, may be received by a judge as evidence in questions between traders in reference to matters of trade.

Art. 13.—The books which persons carrying on trade are compelled to keep, and in which they shall not have observed the formalities above prescribed, cannot be produced as evidence in favour of the parties who have kept the same, without prejudice to the pains and penalties contained in the enactments relating to bankruptcies and fraudulent bankruptcies.

Art. 14.—The production of books and inventories can be enforced in law only in questions of succession, communauté, dissolution of partnership, and in cases of bankruptcy.

Art. 15.—In the course of an action the production of books may be ordered by the judge of his own

accord, to the end that extracts may be taken of such entries as relate to the question in dispute.

Art. 16.—In case the books, the exhibition of which is offered, required, or ordered, happen to be in a place at a distance from the seat of the tribunal where the action depends, the judges may address a commission rogatoire to the Tribunal of Commerce of that place, or grant commission to a justice of the peace to examine and draw up a report of the contents, and send it to the tribunal before which the action depends.

Art. 17.—If the party whose books are appealed to in proof of any fact refuse to exhibit them, the judge may receive the oath of the opposite party in evidence.

TITLE III.

OF CO-PARTNERSHIPS AND COMPANIES.

SECTION I.

OF THE VARIOUS KINDS OF CO-PARTNERSHIPS, AND THE RULES PECULIAR TO EACH.

Art. 18.—The contract of partnership is governed by the Code Civil, the laws peculiar to trade, and the agreement of the parties.

Art. 19.—The French law recognises three kinds of trading partnerships:—

The Société en nom collectif.

The Société en commandite.

The Société anonyme.

Art. 20.—The Société en nom collectif is that into which two or more persons enter, and which has for its object the carrying on of trade under a style or firm.

Art. 21.—The names of the partners can alone appear in the style or firm.

Art. 22.—The partners en nom collectif specified in the deed of partnership are jointly and severally liable in respect of all the engagements of the firm, although but one of the members may have signed, provided he used the name of the firm.

Art. 23.—The Société en commandite is entered into between one or several responsible partners, either of whom is answerable for the whole, and one or more partners, simply capitalists, who are named commanditaires or associés en commandite.

It is carried on under a style or firm which must necessarily be that of one or several of the responsible partners answerable as aforesaid.

Art. 24.—Where there are several partners, jointly and severally liable as aforesaid, whose names appear in the style or firm, whether they be all in the management together, or but one or more be so for the whole, the Société is at once, in regard to them, a Société en nom collectif, and a Société en commandite as regards the parties simply providing the capital.

Art. 25.—The name of a member en commandite cannot appear in the firm.

Art. 26.—The commanditaire partner is subject to loss only to the extent of the funds which he has put, or should have put, into the concern.

Art. 27. (Thus modified by the Law of 6th May, 1863.) The commanditaire partner can undertake no act of management even by virtue of a power of attorney.

Art. 28. (Thus modified by the Law of 6th May, 1863.) In case of contravention of the prohibition in the preceding Article, the commanditaire partner is liable, jointly and severally, with the partners en nom collectif, for all the debts and engagements of the undertaking arising from the acts of management done by him; and he can, according to the number or importance of such acts, be declared jointly and severally liable in respect of all the engagements of the undertaking, or in respect of one or more thereof only. The notices

and advice, and acts of control, do not bind the associé commanditaire.

Art. 29.—The Société anonyme* is not carried on under a style or firm; it is not distinguished by the names of any of the members thereof.

Art. 30.—It is named after the nature of the trade which it purports to carry on.

Art. 31. (Repealed by the Law of 24th July, 1867, Art. 47.)

Art. 32.—The managers are only responsible for the due execution of the mandates they have received. They do not incur by their acts any liability personally, nor jointly and severally, in respect of the engagements of the Société.

Art. 33.—The members are subject to no loss beyond the amount of their interest in the concern.

Art. 34.—The capital of the Société anonyme is divided into shares, and even into share coupons of equal value.

Art. 35.—A share may be constituted under form of a voucher to bearer (titre au porteur). In this case the transfer takes place by delivery.

Art. 36.—The property in the shares may be established by an entry in the books of the Company. In this case the transfer is carried out by a declaration thereof written in the books and signed by the transferor or by his agent.

Art. 37. (Repealed by the Law of 24th July, 1867, Art. 47.)

Art. 38.—The capital of Société en commandite may be likewise divided into shares without prejudice to the rules established for this species of partnership.†

Art. 39.—The Sociétés en nom collectif, or en

* The Société Anonymes are governed by a special Law of the 27th July, 1867. See further for the text of this Law.

† The Sociétés en commandite whose capital is divided into shares, are governed by a special Law of the 27th July, 1867. See further for the text of this Law.

commandite, must be drawn up by *actes publics* or *sous seing privée*, in conforming in the latter case to Art. 1,325 of the Code Civil.*

Art. 40. (Repealed by the Law of 24th July, 1867.)

Art. 41.—No proof by witness can be received against what is contained in the deeds constituting the *Société*, nor of anything extrinsic of their contents, nor of anything alleged to have been agreed to before or after, or since the deed, although it relates to a sum under 150 fs.†

Arts. 42, 43, 44, 45, 46. (Repealed by the Law of 24th July, 1867.)

Art. 47.—Independently of the three kinds of *Sociétés* hereinbefore mentioned, the law recognises the *associations commerciales en participation*.

Art. 48.—These associations relate to one or several descriptions of trade; they may be carried on for the purposes, according to the forms, in the proportions of interest, and on the conditions agreed upon amongst the shareholders.

Art. 49.—The establishment of associations en participation may be proved by books, correspondence, and by parol evidence, if the tribunal decides that the same can be admitted.

Art. 50.—Commercial associations en participation are not subjected to the formalities prescribed for the other descriptions of *Sociétés*.

* The *Actes sous seing privé*, containing reciprocal agreements, are valid only when executed in as many originals as there are parties interested therein. Each original must mention the number of originals which have been executed.

† In civil contracts, *viva voce* evidence is only received in cases where the matter in dispute amounts to less than 150 fs. This principle does not apply to commercial suits, in which all kinds of evidence are admitted, whatever may be the amount in dispute. Art. 41 applying to both civil and commercial *Société*, it is necessary to explain that *viva voce* evidence is not allowed in actions arising out of *Société*, in cases above 150 fs.

SECTION II.

OF DIFFERENCES BETWEEN CO-PARTNERS, AND OF THE MANNER OF ADJUSTING THEM.

Arts. 51 to 63 were repealed by the Law of 17th July, 1856, which suppressed compulsory arbitration. Disputes between partners are now adjudicated upon by the Tribunal of Commerce. (See Art. 631 of the Code of Commerce.)

Art. 64.—All actions against partners, not being liquidateurs de la Société, and their widows, heirs or representatives, are barred after five years from the termination or dissolution of the partnership, if the deed of partnership, stating its duration or term, or the deed of dissolution, were posted up and registered in conformity with Arts. 42, 43, 44, and 46;* and if, since the fulfilment of the above formality, the prescription (statute of limitations) has not been interrupted as regards them by any judicial proceedings.

TITLE IV.

OF SEPARATION OF PROPERTY (Separation de biens).

Art. 65.—Every petition for the separation of property shall be prosecuted, conducted, and adjudicated upon pursuant to the enactments contained in the Code Civil, book iii. title v. chap. ii., and in the Code de Procédure, Second Part, book i. title viii.

Art 66.—Every judgment which pronounces a separation between the persons, or a divorce† between husband and wife, one of whom is a trader, shall be subjected to the formalities prescribed by

* The formalities prescribed by these Articles were modified by the Law of 27th July, 1867, and it is to this new Law that Art. 64 here refers.

† Divorce is abolished in France. (Law of 8th May, 1816.)

Art. 872 of the Code de Procédure Civile;* in default it shall always be competent for the creditors to resist the judgment, so far as it affects their interests, and to challenge the liquidation which may have followed by virtue thereof.

Art. 67.—An extract of the marriage contract between the husband and the wife, one of whom carries on trade, shall be transmitted within one month from the date of the contract, to the registry and other places mentioned in Art. 872 of the Code de Procédure Civile, in order to be posted up on the notice-board, pursuant to the terms of the same Article. This extract must state whether the husband and wife are married under the régime de communauté, whether they are separate as regards property, or whether they have contracted under the régime dotal.

Art. 68.—The notary who prepares the contract of marriage is compelled to make the transmission required by the preceding Article, under a penalty of 100 fs.,† and even of deprivation of his office; he is also liable to the creditors, if it be proved that the omission occurred through collusion.

* The following is a translation of Art. 872:—"The judgment decreeing the separation shall be read publicly, at the same hearing, at the Tribunal of Commerce of the place, if there be one. An extract of the judgment, containing the date, the designation of the tribunal in which the judgment was rendered, the Christian names, surnames, professions, and residence of the married parties, will be inscribed on a notice-board used for the purpose, and exposed during one year in the audience chamber of the Tribunal de Première Instance and of the Tribunal de Commerce of the domicile of the husband, even when he is not a trader; and if there be no Tribunal de Commerce, in the principal chamber of the Town Hall of the domicile of the husband. A similar extract shall be affixed to the notice-board exposed in the Chamber of the Avoués and Notaries, if one exist. The wife cannot commence the execution of the judgment, except from the date upon which the above-mentioned formalities have been complied with, without it being nevertheless necessary that she should await the expiration of the above-mentioned delay of one year."

† Since reduced to 20 fs. (Law of 16th June, 1824, Art. 10.)

Art. 69.—(Thus modified by the Law of 28th May, 1838.)—A husband, separated as regards property, or married under the régime dotal, who engages in trade subsequent to the marriage, shall be bound to make the same transmission within one month from the day he has commenced business, under pain, in case of insolvency, of being condemned as a fraudulent bankrupt.

Art. 70.—The same transmission shall be made, under the same penalty, within one year from the publication of the present law, by all married persons, separate as regards property, or married under the régime dotal, who, at the time of such publication, are engaged in trade.

TITLE V.

OF EXCHANGES OF COMMERCE (Bourses de Commerce), STOCKBROKERS (Agents de Change), AND BROKERS (Courtiers).

SECTION I.

OF EXCHANGES OF COMMERCE.

Art. 71.—The Bourse de Commerce is a meeting which takes place under the authority of Government, and is composed of merchants, shipmasters, stockbrokers and brokers.

Art. 72.—The result of the negotiations and transactions which take place upon 'Change determines the rate of exchange on goods, insurance, freights, carriage by land and water, in the public and all other funds, the rates of which are susceptible of being quoted.

Art. 73.—These several rates are determined by the exchange agents and brokers, according to the forms prescribed by general or particular rules.—(Règlements de Police Généraux ou particuliers.)

SECTION II.

OF STOCKBROKERS AND BROKERS.*

Art. 74.—The law recognises, in the carrying on of trade, intermediate agents, namely:—stock or exchange brokers and brokers. These are established in every town in which there is a Bourse de Commerce. They are appointed by the Government. (Thus modified by the Law of 2nd July, 1862.)

Art. 75.—Stockbrokers belonging to Bourses provided with a Parquet can associate with themselves capitalists, who can share in the profits and losses resulting from the working of the office, or of the sale thereof. These capitalists are only liable for the losses to the extent of the capital they embark in the business. The party who holds the office must always be a proprietor in his own name of one-fourth at least of the amount representing the value of the same and the amount of the cautionnement. An extract of the deed and of the changes therein must be published, under pain of nullity as regards the parties interested, but such default cannot be alleged as against the rights of third parties.

Art. 76.—Stockbrokers appointed in the manner prescribed by law have alone the right of operating in the public and other funds susceptible of quotation, of negotiating on account of other bills or notes of exchange, and all other negotiable paper, and of fixing the current market price thereof.

The exchange agents can, jointly with the merchandise brokers, negotiate and carry out the sale or purchase of bullion or specie. They alone have the right to fix the current market price.

Art. 77.—There are merchandise brokers, insurance brokers, interpreting and ship brokers, land and water carriage brokers.

Art. 78.—Merchandise brokers, constituted in

* For commentary, *see* p. 245 *et seq.*

the manner prescribed by law,* have alone the right to perform the brokerage of goods, and to fix the current market price thereof. They exercise, concurrently with agents de change, the brokerage of metals and metallic substances.

Art. 79.—The insurance brokers, jointly with the notaries, draw up all contracts and policies of insurance. They attest, under signature, the truth of such writings, certifying the rate of premium for all voyages by sea or river.

Art. 80.—The interpreting or ship brokers have the brokerage of freights and charter-parties; they have moreover alone the right of translating, in contested matters brought before the tribunals, the declarations, charter-parties, bills of lading, contracts, and all commercial writings, the translation of which shall be necessary; and lastly, of fixing the rates of freight or carriage.

For all commercial disputes, and where the interest of the customs is concerned, they alone interpret for all foreigners, masters of ships, merchants, crews, and other seafaring persons.

Art. 81.—The same individual may, if the Crown deed by which he is appointed authorises it, exercise the functions of agent de change, merchandise, insurance, interpreting and ship broker.

Art. 82.—The land and water carriage brokers, constituted according to law, have alone in the places where they are established, the right of brokerage in transports by land and by water. They cannot in any case, or under any pretext, exercise the functions of merchandise, insurance, or ship brokers, mentioned in Arts. 78, 79 and 80.

Art. 83.—No bankrupt can be an agent de change or broker unless he has been reinstated.

Art. 84.—Agents de change and brokers are bound to have a book after the form prescribed by

* The monopoly of merchandise brokers is suppressed by the Law of 18 Juill., 1866.

Art. 11. They are bound to enter in this book day by day, and in order of the dates, without erasures, interlineations or transferences, and without abbreviations or cyphers, the whole conditions of their sales, purchases, insurances, negotiations, and in general of all their acts of agency.

Art. 85.—An agent de change or broker cannot, in any case, or under any pretext, effect commercial or banking operations on his own account.

He cannot be interested directly or indirectly in his own name or under a borrowed name in any commercial enterprise.

Art. 86.—He cannot become guarantee for the performance of the bargains which he makes for his employers.

Art. 87.—Every infraction of the provisions contained in the two preceding Articles incurs the punishment of privation of office, and a fine, to be imposed by the Tribunal de Police Correctionnelle, not exceeding the sum of 3,000 fs., without prejudice to the right of the party injured to an action for damages.

Art. 88.—No agent de change or broker dismissed from office, in virtue of the preceding Article, can be restored to his functions.

Art. 89.—In case of failure, every agent de change or broker shall be prosecuted as a fraudulent bankrupt.

Art. 90. (Thus modified by Law of 2nd July, 1862.)—Provision shall be made by réglemens d'administration publique concerning the following, viz.:—1. The rate of caution money, the same not to exceed 250,000 fs. 2. The negotiation and transfer of the property in public securities, and generally as regards the execution of the provisions contained in the present chapter.

TITLE VI.

OF PLEDGES, AGENTS AND COMMON CARRIERS.

(Du Gage et des Commissionnaires.)

Law of 23rd May, 1863.

SECTION I.

OF PLEDGES.

Art. 91.—A pledge made by a trader or by a non-trader in respect of a commercial transaction must be carried out, as regards third parties as well as regards the contracting parties, according to the provisions of Art. 109 of the Code de Commerce. The pledge, as regards negotiable securities, can also be established by a regular endorsement, stating that the securities have been deposited as guarantee. With respect to shares, shares of interest (part d'intérêts), and nominative obligations (obligations nominatives) of financial, manufacturing, commercial, or civil Companies, the transmission of which is carried out by transfers in the books of the Company, a pledge thereof can also be established by a transfer as a document of security inscribed in the said registers. The present Article does not repeal the clauses of Art. 2,075 of the Code Civil as regards claims of personalty, to which the creditor cannot become entitled as regards third parties, but pursuant to a notice to the debtor of the conveyance made by the creditor. Bills of exchange given in pledge can be sued upon by the holder of the pledge.

Art. 92.—In all cases the prior claim to the property pledged does not exist thereon unless the security be placed and remain in the possession of the creditor, or of a third person agreed upon

between the parties.* The creditor is reputed to have the goods in his possession when they are at his disposal in his warehouses or ships, in the Custom House or public bonded warehouses, or if, before he possesses the same, by virtue of a bill of lading or carrier's receipt.

Art. 93.—In default of payment at maturity, the creditor can, eight days after a simple notification to the debtor and to the third party holding the security (in that event), proceed to public sale of the property pledged. Sales, other than those undertaken by stockbrokers, must be effected by brokers. Nevertheless, upon the petition of the parties, the president of the Tribunal de Commerce can appoint a member of another body of public officials to carry out the sale. In the latter case the public official, whoever he may be, entrusted with the sale, is subjected to the provisions governing brokers as respects the formalities, the tariffs, and the responsibility attending the same.

The provisions of Arts. 2 and 7, inclusive of the Law of 28th May, 1858, respecting public sales, are applicable to sales carried out in pursuance of the preceding paragraph. Any clause authorising a creditor to realise the security and dispose of the same, without complying with the formalities hereinbefore mentioned, is void and of no effect. (Thus modified by the Law of 28th May, 1858.)

SECTION II.

OF FACTORS IN GENERAL.

Art. 94.—A factor is he who transacts business in his own name, or under a partnership firm for account of his employer or principal. The duties and rights of factors and agents who act in the

* Bills of sale do not exist in France. It is not possible to borrow money upon property which is to remain in the possession of the borrower, as is customary in England.

name of an employer are determined by the Code Civil, book iii. title xiii.

Art. 95.—Every factor has a prior claim or lien upon the goods sent to, deposited with, or consigned to him, from the simple fact of such sending, deposit, or consignment, in respect of all loans, advances, or payments, made by him either before the receipt of the same, or during the time they remained in his possession. This lien subsists only pursuant to the condition contained in Art. 92, *supra*. In the lien of a factor, principal, interest, commission and expenses are included. If the goods are sold and delivered on account of the principal, the factor repays himself, from the produce of the sale, the amount of his claim in priority to the creditors of the principal.

SECTION III.

OF COMMISSIONNAIRES FOR CARRIAGE BY LAND OR WATER.

Art. 96.—The commissionnaire who undertakes a transport by land or water must make an entry in his journal of the nature and quantity of the merchandise, and if required, of the value thereof.

Art. 97.—He is responsible for the arrival of the goods within the time limited in the bill of parcels, except in the case of force majeure, as defined by law.

Art. 98.—He is responsible for all damage or loss of the merchandise and goods, unless a contrary stipulation appears in the bill of parcels, or unless in case of force majeure.

Art. 99.—He is responsible for the acts of the agent to whom he addresses the merchandise.

Art. 100.—The merchandise, when once out of the warehouse of the vendor or party despatching the same, is forwarded, unless it be agreed otherwise, at the risk of the owner, the latter reserving

his right of indemnity against the commissionnaire entrusted with the carriage.

Art. 101.—The way-bill (*lettre de voiture*), amounts to a contract between the consignor and the carrier; or between the consignor, the commissionnaire and the carrier.

Art. 102.—The way-bill must be dated; it should set out—the nature, the weight, or contents of the object to be carried; the period within which the carriage must be effected. It must also state the name and domicil of the commissionnaire through whose medium the carriage is to be effected, should one exist; the name of the consignee; the name and address of the carrier; also the rate of carriage, and the indemnity payable for delay. The document must be signed by the sender or the commissionnaire; the marks and numbers of the goods must be inserted in the margin. The bill of parcels must be copied by the commissionnaire into a register, each entry in which must be made consecutively and without blanks.

SECTION IV.

OF CARRIERS.

Art. 103.—A carrier is responsible for the loss of the objects entrusted to him to deliver, unless in case of force majeure. He is responsible for all damage other than such as may inherently exist in the goods, the case of force majeure excepted.

Art. 104.—If, through the cause of force majeure, the transport is not carried out within the period stipulated, no indemnity is payable by the carrier on account of the delay.

Art. 105.—The receipt of the objects transported, and the payment of the price of carriage, relieves the carrier from all legal proceedings.

Art. 106. — In case of refusal or dispute concerning the receipt of the objects transported, their condition must be verified and reported on by experts appointed by the president of the Tribunal of Commerce, or, in his absence, by the justice of the peace, or by an order made upon petition. The deposit or seizure, and afterwards the transport of the goods to a public warehouse, can be ordered. A sale can be ordered in favour of the carrier to the extent of the amount due for carriage.

Art. 107. — The provisions contained in the present title apply also to shipmasters and proprietors of diligences and public conveyances.

Art. 108. — All actions against commissionnaires and carriers for loss or damage to goods are barred after six months, in respect of goods forwarded in the interior of France, and after one year in respect of goods forwarded to foreign parts; the whole to be calculated, in case of loss, from the date when the transport of the goods should have been effected: and in case of damage, from the date when the delivery of the goods should have taken place; without prejudice to cases of fraud or dishonesty.

TITLE VII.

OF PURCHASES AND SALES.

Art. 109. — Purchases and sales are proved:—

By actes publics.

By actes sous seing privé.

By the note-book or memorandum of an agent de change or broker, duly signed by the parties.

By an invoice or bill of parcels accepted.

By the correspondence of the parties.

By the books of the parties.

By parol testimony in cases where the tribunal shall determine it to be admissible.

TITLE VIII.

OF BILLS OF EXCHANGE, PROMISSORY NOTES (BILLETS A ORDRE), AND PRESCRIPTION.

SECTION I.

OF BILLS OF EXCHANGE.

§ 1.—OF THE FORM OF A BILL OF EXCHANGE.

Art. 110.—A bill of exchange (*lettre de change*) is drawn from one place upon another.

It is dated. It states the sum payable, the name of the party to pay the same, the date and place where payment should be made, and the value received in cash, goods, in account, or otherwise.

It is payable to the order of a third party, or to the order of the drawer.

If the bill is drawn in sets of first, second, third, &c., it is so expressed.

Art. 111.—A bill of exchange can be drawn upon one party, and payable at the domicile or residence of a third.

It can be drawn by order and for account of a third party.

Art. 112.—All bills of exchange containing false statements in respect of name, profession, domicile, or the places where the same are drawn or payable, have the force and effect of simple *promesse* only.

Art. 113.—The signatures of married and unmarried women, non-traders, upon a bill of exchange, bind them only to the extent of simple *promesses*.

Art. 114.—Bills of exchange signed by minors, non-traders, are void as against them, subject to the provisions of Art. 1,312 of the Code Civil,* but

* Art. 1,312 of the Civil Code provides that minors cannot be exonerated from their engagements if they have benefited by the same.

such bills are valid as between the other parties thereto.

§ 2.—OF PROVISION (de la Provision).

Art. 115.—The provision should be furnished by the drawer, or by the party for whose account the bill is drawn, but the drawer for account of a third party remains nevertheless personally responsible towards the indorsers and the holder alone.

Art. 116.—Provision exists, if, at the maturity of the bill, the party upon whom it is drawn be indebted to the drawer, or to the party upon whose account the bill was drawn, in a sum at least equal to the amount of the bill of exchange.

Art. 117.—By acceptance, provision is presumed to exist, and as regards indorsers, acceptance establishes proof thereof. Whether there be acceptance or not, the drawer alone is bound to prove, if it be disputed, that the parties upon whom the bill was drawn had provisions at maturity, otherwise he is compelled to give security for the same, although the protest may have been made after the periods fixed by law.

§ 3.—OF ACCEPTANCE.

Art. 118.—The drawer and indorsers of a bill of exchange are jointly and severally sureties for the acceptor and the payment of the bill at maturity.

Art. 119.—The refusal to accept is proved by a document called "protest for non-acceptance."

Art. 120.—Upon notification of the protest for non-acceptance, the indorsers and the drawer are respectively bound to give security to insure the payment of the bill at maturity, or to pay the same, together with the expenses of protest and of re-exchange.

The party giving security for the drawer, or for an indorser, is jointly and severally liable only with the parties for whom his security is given.

Art. 121.—A party accepting a bill of exchange takes upon himself the obligation of paying the amount thereof. An acceptor cannot recall his acceptance, even if the drawer had suspended payment without the acceptor's knowledge, before he had accepted the bill.

Art. 122.—The acceptance of a bill of exchange must be signed.

The acceptance is expressed by the word "accepté."

The acceptance must be dated if the bill is payable at one or several days or months after date; and in the latter case, the non-existence of the date of acceptance renders the instrument payable at the period expressed calculated from its date.

Art. 123.—The acceptance of a bill of exchange, payable in a place other than the residence of the acceptor, must state the domicile at which payment will be made, or the requisite legal formalities complied with.

Art. 124.—An acceptance cannot be conditional; but it can be limited as regards the amount accepted for, and in this event the bearer must protest the bill for the surplus.

Art. 125.—A bill of exchange should be accepted upon presentation, or at latest within 24 hours therefrom. After the expiration of 24 hours, if the bill be not returned accepted or non-accepted, the party retaining the same is liable for damages to the holder.

§ 4.—OF ACCEPTANCE BY INTERVENTION.

Art. 126.—In the case of protest for non-acceptance, the bill of exchange can be accepted by a third party intervening for the drawer or for one of the indorsers.

The intervention is mentioned in the protest, and must be signed by the party intervening.

Art. 127.—The party intervening is bound to

notify his intervention without delay to the person for whom he intervened.

Art. 128.—The holder of a bill of exchange preserves all his rights against the drawer and indorsers in the case of the drawee refusing acceptance, notwithstanding all acceptances by intervention.

§ 5.—OF MATURITY.

Art. 129.—A bill of exchange can be drawn as follows :—

At sight.

| | |
|-------------------------------|----------------|
| At one or several days | } after sight. |
| At one or several months | |
| At one or several usances | |
| At one or several days | } after date. |
| At one or several months | |
| At one or several usances | |
| At a day fixed or determined. | |
| At fair time. | |

Art. 130.—A bill of exchange drawn at sight is payable upon presentation.

Art. 131.—The maturity of a bill of exchange

| | |
|---------------------------|---------------|
| At one or several days | } after sight |
| At one or several months | |
| At one or several usances | |

is fixed by the date of acceptance or by that of the protest for non-acceptance.

Art. 132.—A usance is reckoned thirty days, commencing the day following the date of the bill of exchange.

Months are calculated according to the Gregorian calendar.

Art. 133.—A bill of exchange payable during fair time matures the day previous to the closing of the fair, or the day of the fair, if the same last but one day.

Art. 134.—When a bill of exchange matures upon a legal holiday, it is payable the day preceding.

Art. 135.—All days of grace, favour, usage, or local custom for the payment of bills of exchange are abolished.

§ 6.—OF THE INDORSEMENT.

Art. 136.—The property in a bill of exchange is transmissible by indorsement.

Art. 137.—The indorsement is dated.

It sets out the value received.

It mentions the name of the party to whose order it is passed.

Art. 138.—If the indorsement be not in conformity with the preceding section, it does not take effect as a transfer, but operates as a “procuration” only.

Art. 139.—It is forbidden to antedate indorsements. Such an offence is forgery.

§ 7.—OF JOINT AND SEVERAL LIABILITY.

Art. 140.—All the parties who have signed, accepted, or indorsed a bill of exchange are jointly and severally liable to the holder.

§ 8.—OF SURETY (Aval).

Art. 141.—The payment of a bill of exchange, independently of the acceptance and endorsement, can be guaranteed by an “aval” (surety).

Art. 142.—This guarantee is given by a third party upon the bill itself or by a separate document.

The guarantor is liable, jointly and severally, with the drawer and indorsers, and subject to the same measures unless the parties agree otherwise.

§ 9.—OF PAYMENT.

Art. 143.—A bill of exchange must be paid in the currency indicated thereon.

Art. 144.—A party paying a bill of exchange before maturity is responsible for the validity of such payment.

Art. 145.—A party who pays a bill of exchange at maturity, and without receiving notice of opposition to the payment, is presumed to be legally discharged.

Art. 146.—The holder of a bill of exchange cannot be compelled to accept payment thereof before maturity.

Art. 147.—The payment of a bill of exchange, made upon a second, third, or fourth of exchange, &c., is valid when the second, third, fourth, &c., state that the payment thereof annuls the others.

Art. 148.—The party who pays a bill of exchange on a second, third, fourth, &c., without retiring the bill upon which his acceptance appears, is not discharged as regards the holder of such acceptance.

Art. 149.—“Opposition” to payment of a bill of exchange is admissible only in the case of the bill being lost, or the bankruptcy of the holder.

Art. 150.—In the case of loss of a bill of exchange unaccepted, the party to whom it belongs can sue for payment on a second, third, fourth, &c.

Art. 151.—If an acceptance be written upon a bill of exchange which is lost, proceedings for payment upon a second, third, fourth, &c., cannot be instituted without a judge’s order and giving security.

Art. 152.—If the party having lost the bill of exchange, whether accepted or not, cannot produce the second, third, fourth, &c., he can demand payment of the lost bill, and obtain same by a judge’s order, upon proving his title thereto by his books, and upon giving security.

Art. 153.—In the event of payment being refused upon demand made pursuant to the two preceding Articles, the owner of the lost bill preserves all rights thereunder by making an act of protest.

This formality must be complied with upon the day following the maturity of the lost bill.

The protest must be notified to the drawer and indorsers in the forms and within the time specified hereafter for the notification of protests.

Art. 154.—The owner of the missing bill should in order to procure the second, apply to his im-

mediate indorser, who is bound to lend him his name and services to proceed against his own and so on through indorser, all the indorsers up to the drawer. The owner of the missing bill bears all the costs of the above.

Art. 155.—The obligation undertaken by the surety, mentioned in Arts. 151 and 152, becomes inoperative after three years, if in the meantime proceedings have not been instituted.

Art. 156.—Payments made on account of the amount of a bill of exchange relieve the drawer and indorsers *pro tanto*.

The bearer must protest the bill for any surplus due.

Art. 157.—The Courts cannot give time for payment of a bill of exchange.

§ 10.—OF PAYMENT BY INTERVENTION.

Art. 158.—A protested bill of exchange can be paid by any person intervening for the drawer, or one of the indorsers.

The intervention and the payment must be stated either in or at the end of the deed of protest.

Art. 159.—A party paying a bill of exchange by intervention stands in the same position as the holder, and must fulfil the same formalities.

If the payment by intervention be made on account of the drawer, all the indorsers are discharged.

If it be made on account of an indorser, the subsequent indorsers are discharged.

If several parties present themselves to accept by intervention, the party operating the greatest number of *libérations* will be preferred to the others.

If the party upon whom the bill was originally drawn, and against whom the bill has been protested for want of acceptance, desires to pay the bill, he shall be preferred to the others.

§ 11.—OF THE RIGHTS AND OBLIGATIONS
OF THE HOLDER.

Art. 160. — The holder of a bill of exchange drawn upon the Continent, or islands of Europe, or Algeria, and payable within the European possessions of France, or in Algeria, either at sight, or at one or several days or months, or usances after sight, must enforce payment or acceptance within six months from the date of the bill, under the penalty of losing his recourse against the indorsers, and even against the drawer should the latter have made provision.

The delay is four months for bills of exchange drawn in the States of the littoral of the Mediterranean and of the littoral of the Black Sea upon the European possessions of France, and reciprocally from the Continent and islands of Europe upon the French establishments in the Mediterranean and Black Seas.

The delay is six months for bills of exchange drawn in the States of Africa not beyond the Cape of Good Hope, and the islands of America not beyond Cape Horn, upon the European possessions of France, and reciprocally in the Continent and islands of Europe upon the French establishments or possessions in the States of Africa not beyond the Cape of Good Hope, and in the States of America not beyond Cape Horn.

The delay is one year for bills of exchange drawn in any other part of the world upon the European possessions of France, and reciprocally in the Continent and islands of Europe upon the French possessions and establishments in any other part of the world. The same penalty applies to the holder of a bill of exchange payable at sight, at one or several days, months, or usances after sight, drawn in France, or in the French establishments or possessions and payable in foreign parts, unless he enforce payment or acceptance within the delay above mentioned for each of the distances

respectively. The above delays are doubled in case of maritime war. The above provisions shall nevertheless not prejudice any stipulations to the contrary that may be agreed upon between the holder, the drawer, and even the indorsers.

Art. 161.—The holder of a bill of exchange must enforce payment thereof upon the date of maturity.

Art. 162.—The refusal or default of payment must be stated the day following the maturity by a deed called protest for non-payment.

If this day falls upon a legal holiday, the protest must be made the day ensuing.

Art. 163.—The holder is not dispensed from making the protest in default of payment either by the protest for want of acceptance, or by the death or bankruptcy of the party upon whom the bill of exchange was drawn.

In the case of the bankruptcy of the acceptor before maturity, the bearer can protest the bill and proceed against the other parties thereto forthwith.

Art. 164.—The holder of a bill of exchange protested for want of payment can bring his action against the drawer and each of the indorsers individually, or collectively against the drawer and indorsers. The same right is accorded to each of the indorsers in respect to the drawer and preceding indorsers.

Art. 165.—If the holder enforces his remedy against the party from whom he received the bill, he must notify the protest to him, and, in default of payment, must bring his action to obtain judgment within 15 days after the date of the protest if the debtor resides within five myriamètres.

This delay, in respect to the party domiciled beyond five myriamètres from the place in which the bill was payable, is increased by one day for each two and a-half myriamètres exceeding the five myriamètres.

Art. 166.—(Modified as follows by the law of 3rd May, 1862.)—Upon bills of exchange drawn in France, and payable beyond the Continental territory

of France in Europe, being protested, the drawers and indorsers residing in France must be sued within the periods hereinafter mentioned :

Within one month for bills payable in Corsica, Algeria, Great Britain, Italy, the Low Countries, and the States or Confederations contained within the frontiers of France. Within two months for bills payable in the other States of Europe, the littoral of the Mediterranean and the Black Sea. Five months for bills payable out of Europe within the Straits of Malacca and the Sunda Islands, and within Cape Horn ; eight months for bills payable beyond the Straits of Malacca and the Sunda Islands and beyond Cape Horn.

The same periods must be proportionately observed in respect of proceedings against drawers and indorsers residing in French possessions situated beyond Europe.

The above delays are doubled for places beyond the seas in case of maritime war.

Art. 167.—If the holder exercises his recourse collectively against the indorsers and the drawer, he is entitled in respect to each of them, to the periods specified in the preceding Articles.

Each of the indorsers has the right to exercise the same recourse, either individually or collectively, within the same periods.

The time commences to run, as regards them, from the day following the date of the citation in the action.

Art. 168.—After the expiration of the delays above-mentioned for the presentation of a bill of exchange (at sight, or at one or several days or months, or usances after sight), for the protest for want of payment, for the institution of proceedings against the guarantors, the holder of the bill of exchange is deprived of all remedies against the indorsers.

Art. 169.—The indorsers are also deprived of their rights to sue their immediate indorsers as

guarantors, after the periods above set out, as applying to them respectively.

Art. 170.—The holder and indorsers are in like manner deprived of their rights, as against the drawer, if the latter can prove that provision existed at the maturity of the bill of exchange.

In this event the holder can only exercise his remedy against the drawee.

Art. 171.—The deprivation of the remedies mentioned in the three preceding Articles ceases to apply in the case of the holder of a bill against the drawer and indorsers, who, after the expiration of the delays fixed for the protest, the notification thereof, or the citation to judgment, receive in account, set-off or otherwise, funds applicable to the payment of the bill of exchange.

Art. 172.—Independently of the formalities prescribed for the action against the guarantors, the holder of a bill of exchange, protested for want of payment, can, with the leave of a judge, attach the personalty of the drawer, acceptors and indorsers.

§ 12.—OF PROTESTS.

Art. 173. (Modified by decree of 23rd March, 1848, Art. 2.)—Protests in default of acceptance or payment are made by two notaries, or by one notary and two witnesses, or by a huissier and two witnesses.

The protest must be made at the domicile or last-known domicile of the party by whom the bill of exchange was payable; at the domicile of the parties named in the bill to pay the same *au besoin*, and at the domicile of a third party accepting by intervention. The above must be stated in one deed of protest.

In the event of a false address, the protest is preceded by an “*acte de perquisition*.”

Art. 174.—The deed of protest contains a literal copy of the bill of exchange, the acceptance, the indorsements, and other clauses appearing

thereon, a summons to pay the amount of the bill. It also states whether the party liable to pay the bill was present or absent, and the reasons assigned for refusal to pay, and the inability or refusal to sign.

Art. 175.—No act on the part of the holder of a bill of exchange can dispense with the protest, with the exception of the case provided for by Art. 150, *et seq.*, respecting the loss of a bill.

Art. 176.—Notaries and huissiers are compelled, under pain of suspension, costs, and damages towards the parties, to leave exact copies of all protests, and to transcribe the same literally day by day, and by order of date in a special register indexed and paragraphed and kept in the form prescribed for *répertoires*.

Art. 177.—Re-exchange is effected by a “*retraite*.”

Art. 178.—(Thus modified by the Decree of 24th March, 1848, which has not been repealed, and is still applied in practice.)—The *retraite* comprises, with the detailed statement signed by the drawer only: 1. The amount of the principal of the protested bill. 2. The expenses of protest and notification. 3. The interest since default. 4. Loss of exchange. 5. The stamp, which is fixed at thirty-five centimes.

Art. 179.—(Thus provisionally modified by the Decree of 24th March, 1848.)—The re-exchange is calculated in French territory uniformly as follows: One quarter per cent. upon the *chef-lieux de département*. One-half per cent. upon the *chef-lieux d'arrondissement*. Three-quarters per cent. upon any other place. In no case will re-exchange be permitted in the same *département*. Foreign exchanges and those relating to French possessions out of France will be governed by the usages of trade.

Art. 180. (Repealed by the Decree of 24th March, 1848.)

Art. 181. (Repealed by the Decree of 24th March, 1848.)—Account of return expenses.

Art. 182.—One compte de retour only can be made on the same bill of exchange.

This compte de retour is reimbursed by one indorser to the others respectively, and ultimately by the drawer.

Art. 183.—Re-exchanges cannot be cumulative. The drawer and each indorser support one only respectively.

Art. 184.—The interest upon the principal of a bill of exchange protested in default of payment is payable from the date of the protest.

Art. 185.—The interest upon the expenses of protest, re-exchange, and other legitimate costs, is payable from the date of the commencement of the action for payment of the bill.

Art. 186. (Repealed by the Decree of 24th March, 1848.)

SECTION II.

PROMISSORY NOTES (Billets à Ordre.)

Art. 187.—All the provisions relating to bills of exchange, viz.:—

Maturity,
Indorsement,
Joint and several liability,
Sureties,
Payment,
Payment by intervention,
Protest,
Duties and rights of the holder,
Re-exchange and interest,

are applicable to billets à ordre, without prejudice to the provisions contained in Arts. 636, 637 and 638.

Art. 188.—The promissory note is dated. It states the amount payable, the name of the party to whose order the instrument is made and the period when payment must take place. It also states whether the value received has been in cash, merchandise, in account, or otherwise.

SECTION III.

LIMITATION OF ACTIONS (Prescription).

Art. 189.—All actions relating to bills of exchange, and to billets à ordre subscribed by merchants, traders, or bankers, or for acts of commerce, are barred after five years from the date of the protest or of the last judicial proceeding, if judgment has not been rendered, or if the debt has not been recognised by a separate deed.

Nevertheless the defendants are compelled, if required, to affirm under oath that they owe nothing further; and their widows, heirs, and representatives must in like manner swear that to the best of their belief nothing is owing.

BOOK II.

OF MARITIME COMMERCE.

TITLE I.

OF SHIPS AND OTHER VESSELS.

Art. 190.—Ships and other vessels are personal property.

Nevertheless, they are liable for the debts of the vendor, and especially for those which the law declares to be privileged.

Art. 191.—Privileged debts are the following, and in the order in which they are classed:—

1st. Judicial costs and other charges incurred in obtaining a sale of the vessel, and the distribution of the proceeds thereof.

2nd. The charge for pilotage, tonnage, hold-fees, lashing, basin or outer basin.

3rd. The wages of the keeper, and the expenses of guarding the vessel from the time of her entrance into port till the sale.

4th. The storage of her rigging, tackle, and apparel.

5th. The expenses of repairing the vessel, rigging, and apparel, since her entrance into port from her last voyage.

6th. The wages and pay of the captain and crew employed in the last voyage.

7th. The sums advanced to the captain for the necessary expenses of the vessel during the last voyage, and the reimbursement of the price of the goods sold by him for the same purpose.

8th. The sums due to the vendor, tradesmen, and workmen employed in the building of the vessel, if she has not yet made a voyage, and those due to creditors for furniture, work, labour, and for re-fitting, victualling, outfits, and equipment, before the departure of the vessel, if she has already made a voyage.

9th. The sums lent on bottomry, on the rigging and apparel, for repairing, victualling, outfit and equipment before the departure of the vessel. (Repealed by the Law of 10th December, 1874.)

10th. The amount of the premiums of insurance effected on the hull, rigging, apparel, outfit and equipment of the vessel for her last voyage.

11th. The indemnity due to the freighters for not delivering the goods laden on board, or for the damage which the goods may have sustained through the default of the captain or crew.

The creditors comprised in each of the numbers of the present Article shall have a concurrent lien on the vessel for the amount of their demands; and in case of insufficiency, the price of the vessel shall be divided equally among them in proportion to the amount due to each. Parties having claims guaranteed by mortgage upon the ship will be paid in the order of registration of such mortgages, but after payment of those claims which the law declares by this same Article to be privileged debts.

Art. 192.—The privilege granted to the creditors mentioned in the preceding Article cannot be maintained unless their several demands be proved in the following manner:

1st. The judicial costs must be proved by the list of fees settled by the competent tribunals.

2nd. The dues of tonnage and other charges, by the legal acquittances from the collectors.

3rd. The debts designated by Nos. 1, 3, 4, and 5 of Art. 191, by bills certified by the president of the Tribunal of Commerce.

4th. The wages and pay of the crew, by the shipping articles and rolls of equipage fixed by the Offices of Maritime Inscription.

5th. The sums lent, and the value of the merchandise sold, to defray the necessary expenses of the vessel during the last voyage, by accounts stated by the captain, and confirmed by reports signed by the captain and the principal officers of the vessel, proving the necessity of the loans.

6th. The sale of the vessel by an instrument in writing, having a date certaine, and the supplies for outfits, equipping, and victualling the vessel, must be proved by the accounts, bills or invoices, examined by the captain and adjusted by the ship's owner, a copy of which must be deposited in the clerk's office of the Tribunal of Commerce, before the departure of the vessel, or, at the latest, within 10 days after her departure.

7th. The sums lent on bottomry, on the hull, rigging, apparel, outfits and equipment of the vessel before her departure, must be proved by contracts certified by a notary, or sous signatures privées of the parties, duplicates of which must be deposited in the clerk's office of the Tribunal of Commerce, within 10 days from their date. (Repealed by Art. 27 of the Law of 10th December, 1874.)

8th. The premiums of insurance must be proved by the policies, or by extracts from the books of insurance brokers.

9th. The indemnity due to the freighters must be proved by judicial decisions, or by awards of arbitrators to whom the subject shall have been submitted.

Art. 193.—The privileges of creditors are extinguished :—

Independently of the general causes of extinction of obligations ;

By judicial sale, made according to the forms prescribed by the following title of this book;

Or, when, after a voluntary sale, the vessel shall have made a sea voyage in the name and at the risk of the purchaser, and without objection on the part of the creditors of the vendor.

Art. 194.—A ship is understood to have made a sea voyage:—

When her departure and her arrival shall be proved to have taken place in two different ports, within 30 days after the departure;

When, without having arrived in another port, more than 60 days have elapsed between her departure and return to the same port, or when the vessel, having sailed on a distant voyage, has been more than 60 days at sea, without any claim being made on the part of the creditors of the vendor.

Art. 195.—The voluntary sale of a vessel must be made in writing, and may be evidenced by an acte public or by acte sous seings privés.

It may be made for the whole vessel, or a portion of the vessel, whether she be in port or at sea.

Art. 196.—The voluntary sale of a vessel at sea does not operate to prejudice of the creditors of the vendor.

Consequently, the vessel or her price continues, notwithstanding the sale, as a pledge to the said creditors, who may even, if they deem it proper, contest the legality of the sale on the ground of fraud.

TITLE II.

OF THE SEIZURE AND SALE OF SHIPS AND VESSELS.

Art. 197.—All ships and vessels may be seized and sold by judicial authority, and the privilege of creditors shall be extinguished by the following formalities.

Art. 198.—No proceeding in regard to seizure shall take place until the lapse of 24 hours after the commandement for payment.

Art. 199.—The commandement must be served on the person of the owner of the vessel, or at his domicil, if it relates to a suit against him by a general creditor.

It may be served on the captain of the vessel, if the debt be of the number of those which are privileged according to the terms of Art. 191.

Art. 200.—The huissier states in his report:—

The name, profession, and residence of the creditor for whom he acts;

The title or warrant authorising his proceeding;

The amount of the debt to be recovered;

The domicil chosen by the creditor, in the place where the tribunal is held which has cognisance of the cause, and that where the vessel seized is moored;

The names of the owner and captain;

The name, description, and tonnage of the vessel;

He mentions and describes the boats, rigging, utensils, armament, and provisions belonging to the vessel;

He places a keeper on board.

Art. 201.—If the owner of the vessel seized reside within the district of the tribunal, the attaching creditor must, within the space of three days, give him notice of the seizure, accompanying the notice with a copy of the huissier's report, and citing the owner before the tribunal, to assist at the sale of the things seized.

If the owner be not domiciled within the district of the tribunal, the notice, report, and citation are served upon the captain of the vessel seized, or, in his absence, on whomsoever represents the owner or captain; and the delay of three days is increased at the rate of one day for each two myriamètres and a-half (about 15½ miles) from the distance of his domicil.

If he be a foreigner residing out of France, the citation and notice are given in the manner prescribed by the Code of Civil Procedure, Art. 69.

Art. 202.—If the seizure take place of a vessel above 10 tons burden:—

There shall be made three proclamations and advertisements of the intended sale.

The proclamations and advertisements shall be made once a week, for three successive weeks, on the Exchange and in the public square of the place where the vessel is moored.

The seizure and intended sale shall be advertised in one of the newspapers printed in the place where the tribunal is held, which has cognisance of the matter, and if no newspaper be printed there, in one of those published in the district.

Art. 203.—Within two days succeeding each proclamation and publication, the advertisement of the sale must be posted up:—

On the mainmast of the vessel seized;

On the outer door of the tribunal where the proceedings are held;

In the public square of the place, and on the wharf where the vessel lies, and also at the Exchange.

Art. 204.—The proclamations, notices, and publications must designate:—

The name, profession, and residence of the attaching creditor;

The titles in virtue of which he prosecutes;

The amount of the sum due to him;

The domicile chosen by him for the sale, in the place where the tribunal is held, and where the vessel lies;

The name and domicile of the owner of the vessel seized;

The name of the vessel, and that of the captain, and whether she is fitting out, or ready for sea;

The tonnage of the vessel;

The place where lying, or moored;

The name of the plaintiff's avoué ;
The price at which the vessel is set up ;
The days of public sale.

Art. 205.—After the first proclamation, the bids for the vessel shall be received on the day indicated by the advertisement.

The judge appointed by the tribunal of its own accord to act as auctioneer continues to receive the bids, after each proclamation, from week to week, until a certain day fixed for the sale by his ordinance.

Art 206.—After the third proclamation, the vessel is adjudged to the highest and last bidder, at the extinction of the lights, without any other formality.

The judge acting as auctioneer may postpone the sale once or twice, for a week each time.

These postponements are published and posted up.

Art. 207.—If barques, sloops, and other small vessels, of the burden of 10 tons or under, be seized, the sale shall be definitively made in the audience chamber of the Court, after the publication on the quay, for three days in succession, with posting up on the mast, or when there is no mast, on some conspicuous part of the vessel, and on the door of the tribunal.

Eight days complete shall elapse between the notice of the seizure and the sale.

Art. 208.—The judicial sale of the vessel terminates the functions of the captain, reserving to him his right of action for damages against whomsoever he may have legal cause.

Art. 209.—The purchase of a vessel, of whatever tonnage, at a public sale judicially ordered, shall be bound to pay the price at which it was adjudged, within 24 hours, or to deposit the same, free of expense, in the clerk's office of the Tribunal of Commerce, under the penalty of personal imprisonment.*

* Imprisonment for debt was abolished in 1867.

In default of payment, or deposit in the clerk's office, the vessel shall be again put up for sale, and definitively sold, three days after a new publication and a single posting up, at the risk of the former purchaser, who shall be equally constrained, by personal imprisonment, to pay the deficiency, if any, in the price, and damages and all expenses.

Art. 210.—All demands of replevin of the property seized must be made and notified at the clerk's office of the Tribunal of Commerce, before the conclusion of the sale.

If the demands of replevin be not made until after the sale, they shall be legally considered as oppositions to the payment of the price of the object sold.

Art. 211.—The plaintiff, or the party opposing, shall have three days to state his case.

The defendant shall have three days to answer.

The cause shall be carried before the Court on a simple citation.

Art. 212. — Oppositions to the payment of the price of the object sold shall be received for three days succeeding the sale, after which time no more shall be admitted.

Art. 213.—The opposing creditors are required to produce, in the clerk's office, proofs of their claims within three days after the summons given to them by the attaching creditor, or the defendant in the attachment; in default of which, a distribution of the money arising from the sale shall be made, without their participation.

Art. 214.—The privileged creditors are classed, and the distribution made among them according to the order prescribed by Art. 191 of title i. The other creditors receive their quota in proportion to the amount of their respective demands.

Every creditor classed as above mentioned is admitted for the amount of his principal, interest and costs.

Art. 215.—A vessel ready to sail is not liable to seizure, unless on account of debts contracted for

the voyage on which she is bound, and even in this latter case the seizure may be prevented on giving security.

A vessel is understood to be ready to sail when the master has received his clearance and other papers at the Custom-house.

TITLE III.

OF THE OWNERS OF VESSELS.

Art. 216.—Every owner of a vessel is civilly responsible for the acts of the master, and bound, as regards the engagements entered into by the latter, in whatever relates to the vessel and the voyage. He can in any case free himself from the above-named obligations by the abandonment of the vessel and the freight. However, the right of abandonment is not permitted to a party being captain and owner, or part owner, of the vessel. When the captain is only part owner, he is only responsible for engagements contracted by him in relation to the ship and the voyage, but in proportion to his interest. (Thus modified by the Law of 14th June, 1841.)

Art. 217.—The owners of armed vessels, in time of war, shall not, however, be responsible for the misdemeanours and depredations committed at sea by the soldiers on board their vessels, or by the crew, beyond the amount of the security which they shall have given, unless they should be participant in the acts committed, or accomplices.

Art. 218.—The owner may dismiss the master.

There can be no claim to indemnity, if there be no contract in writing.

Art. 219.—If the master dismissed be part owner of the vessel, he may renounce his part ownership, and demand the reimbursement of the value thereof.

The amount of this value is determined by appraisers agreed upon, or officially appointed.

Art. 220.—In everything which concerns the joint interest of the owners of a vessel the opinion of the majority is followed.

The majority is determined by a share of interest in the vessel exceeding one-half of her value.

The severance of property in a vessel, by a public sale of the whole, cannot be effected but on the request of the owners, forming together a moiety of the whole interest in the vessel, unless there be a contrary agreement in writing.

TITLE IV.

OF THE CAPTAIN.

Art. 221.—Every captain, master, or commander charged with the care and management of a ship, or other vessel, is responsible for faults, even though legères, in the exercise of his functions.

Art. 222.—He is answerable for the merchandise laden on board his vessel.

He gives a receipt for it.

This receipt is called a bill of lading (*connaissance*).

Art. 223.—It is the master's duty to form the crew of the vessel, and to choose and hire the sailors and other persons employed on board; which, however, he shall do in concert with the owners, whenever he is in the place of their residence.

Art. 224.—The master keeps a register, marked and certified by one of the judges of the Tribunal of Commerce, or by the mayor or his assistant, in places where there is no Tribunal of Commerce.

This register contains:—

The resolutions passed during the voyage;

The receipts and expenses concerning the vessel, and generally, everything which relates to the duties of his office, and everything which may be the

subject of an account to be rendered, or a demand to be made.

Art. 225.—The master is required, before he takes charge of his vessel, to have her surveyed, according to the terms and forms prescribed by the regulations.

The report of this survey is deposited in the clerk's office of the Tribunal of Commerce, and an abstract of the same delivered to the master.

Art. 226.—The master is required to have on board:—

The certificate of ownership of the vessel ;

The acte de francisation ;

The muster-roll ;

The bills of lading and charter-parties ;

The report of the survey ;

The acquittances for payment of duties, or security for the same to the custom-houses.

Art. 227.—The master is required to be personally on board his vessel, on the entering or coming out of ports, harbours, or rivers.

Art. 228.—In case of infraction of the obligations imposed by the four preceding Articles, the master is responsible for all accidents which may happen, to the prejudice of persons interested in the vessel or cargo.

Art. 229.—The master is equally answerable for all damage which may happen to any merchandise which he shall have put on the deck of his vessel, without the consent in writing of the shipper.

This provision is not applicable to the small coasting trade.

Art. 230.—The master is exempt from responsibility only on proof of force majeure.

Art. 231.—The master and the crew who are on board, or who are in boats going on board to make sail, cannot be arrested in any civil action, unless for a debt contracted for the voyage on which they are bound, and not even in this latter case, if they give security.*

* Imprisonment for debt was abolished in 1867.

Art. 232.—The master, in the place of residence of the owners, or their agents, cannot, without their special authority, have the vessel repaired, buy sails, cordage, or other things for her use, nor take up, for that purpose, money on bottomry, nor let the vessel on hire for freight.

Art. 233.—If the vessel should be let for freight by the consent of the owners, and some of them refuse to contribute to the necessary expenses of outfit, the master, in this case, with the authorisation of the judge, 24 hours after summoning the owners so refusing to furnish their contingent, may borrow the amount of the same for their account, on mortgage, on their portion of interest in the vessel. (Thus modified by the Law of 10th December, 1874.)

Art. 234.—If, during the course of the voyage, it becomes necessary to repair the vessel, or to buy provisions, the master, after having verified the same, by a report drawn up and signed by the principal officers of the crew, may, on obtaining the authorisation in France of the Tribunal of Commerce, or, where there is no Tribunal, of the justice of peace, and in a foreign country, of the French Consul, or, where there is no Consul, of the magistrate of the place, borrow on bottomry, pledge or sell the merchandise laden on board, to the amount of the sum which the necessities of the vessel require.

The owners, or the master who represents them, shall account for the merchandise sold at the current price of goods of the same nature and quality in the place of the discharge of the vessel, at the period of her arrival.

The single freighter, or the divers shippers who are all agreed, can oppose the sale or pledge of their goods by discharging them, and upon payment of the freight in proportion to the term of the voyage then completed. In default of the consent of a part of the shippers, he who desires to avail himself of the right to discharge the cargo must pay the entire freight due on the goods.

Art. 235.—The master, before his departure

from a foreign port, or from one in the French colonies, is required to send to his owners or to their agents, an account, signed by him, containing the particulars of his cargo, the value of the merchandise on board, the sums borrowed by him, the names and places of residence of the lenders.

Art. 236.—The master who shall, without necessity, have taken up money on bottomry, on the hull, provisions or equipment of his vessel, pledged or sold any part of the cargo or the provisions, or who shall have given a false account of damages sustained or expenses incurred, shall be responsible towards the owners and shippers, and personally bound to reimburse the money borrowed, or the value of the articles sold, without prejudice to a criminal prosecution against him, if there be cause.

Art. 237.—Except in cases where the vessel is legally proved not to be seaworthy, the master cannot sell her without a special power for that purpose from the owners, under the penalty of the sale being declared void.

Art. 238.—Every master of a vessel engaged for a voyage is bound to perform it, under the penalty of being answerable for all losses, damages, and expenses towards the owners and freighters.

Art. 239.—The master who takes charge of a vessel for a joint profit on the voyage, cannot carry on any traffic or commerce on his separate account, unless there be an agreement to the contrary.

Art. 240.—In case of infraction of the provision contained in the preceding Article, the merchandise taken on board by the captain for his private account shall be forfeited to the other parties interested in the vessel.

Art. 241.—The master cannot abandon his vessel during the voyage, whatever may be the danger which may arise, without the advice of the officers and principal mariners; and in that case he is required to carry away with him the money, and such part as he can of the most valuable of the

goods on board, under the penalty of being personally answerable for the same.

If the articles thus taken from the vessel be lost by accident, the master shall be discharged from any liability on account of them.

Art. 242. — The master is required, within 24 hours after his arrival, to have his journal certified and to make his report.

The report must mention:—

The place and the time of his departure;

The course he has kept;

The dangers he has encountered;

The accidents which have happened to the vessel and crew, and all the remarkable circumstances of his voyage.

Art. 243. — The report is made at the clerk's office, before the president of the Tribunal of Commerce.

In places where there is no Tribunal of Commerce, the report is made to the justice of peace of the district.

The justice of peace who has received the report is required to send it without delay to the president of the nearest Tribunal of Commerce.

In either case it is deposited in the clerk's office of the Tribunal of Commerce.

Art. 244.—If the master touch at a foreign port, he is required to present himself before the French Consul, to make a report to him, and to take a certificate attesting the period of his arrival and departure, the condition and nature of his cargo.

Art. 245.—If, during the course of the voyage the master be obliged to put into a French port, he is required to declare to the president of the Tribunal of Commerce of the place the causes of his stopping.

In places where there is no Tribunal of Commerce, the declaration is made to the justice of peace of the district.

If forced by stress of weather, or otherwise, to put into a foreign port, the declaration is made to

the French Consul, or, if none there, to the magistrate of the place.

Art. 246.—The master who has been shipwrecked, and who has escaped alone, or with part of his crew, is required to go before the judge of the place, or, where there is no judge, before any other civil authority, and make his report, to have it verified by those of the crew who may have escaped with him, and to take a certified copy of the same.

Art. 247.—In order to verify the report of the master, the judge interrogates the crew, and if possible, the passengers, without rejecting other proofs.

Reports which are not verified are not admitted in discharge of the master, and they cannot be produced in a Court of justice, except in the case where the master shipwrecked has escaped alone in the place where he has made his report.

Proof of contrary facts is allowed to the parties.

Art. 248.—Except in cases of imminent peril, the master cannot discharge any part of the cargo before he has made his report, under the penalty of being prosecuted criminally.

Art. 249.—If the provisions of the vessel fail during the voyage, the master, on taking the advice of the principal persons of the crew, may compel those who have a private stock of provisions to put them in common on condition of being paid the value thereof.

TITLE V.

OF THE ENGAGEMENT AND WAGES OF SEAMEN.

Art. 250.—The conditions of the engagement of the master and crew of a vessel are proved by the shipping Articles, or by agreements between the parties.

Art. 251.—The master and crew cannot, under any

pretence, lade on board the vessel any articles of merchandise for their own account without the permission of the owners, and without paying the freight, unless they be authorised by the terms of their engagement.

Art. 252.—If the voyage be broken up by the act of the owners, captain, or freighters before the departure of the vessel, the seamen hired by the voyage or by the month are paid for the days they have been employed in the equipment of the vessel. They also retain as an indemnity the advances they have received.

If the advances be not yet paid, they receive for their indemnity one month's pay of the wages agreed upon.

If the rupture of the voyage take place after its commencement, the seamen hired by the voyage are paid in full, according to the terms of the agreement.

Seamen hired by the month receive their stipulated wages for the time they have served, and in addition, as an indemnity, one-half of their wages for the presumed duration of the remainder of the voyage for which they were engaged.

Seamen hired by the voyage or month receive, besides their pay, their expenses back as far as the port whence the vessel took her departure, unless the master, the owners, freighters, or the officer of Government procure their passage in another vessel returning to the place of their departure.

Art. 253.—If there be an interdiction of commerce with the place of the vessel's destination, or if the vessel be stopped by order of the Government before the commencement of the voyage—

The seamen can only claim wages for the time they were employed in fitting out the vessel.

Art. 254.—If the interdiction of commerce or arrest of the vessel happen during the course of the voyage.

In case of interdiction, the seamen are paid in proportion to the time they have served.

In case of arrest, the wages of the seamen engaged

by the month continue at the rate of one-half the stipulated monthly price, during the detention.

The wages of seamen engaged by the voyage are paid according to the terms of their engagement.

Art. 255.—If the voyage be prolonged, the wages of seamen engaged by the voyage are increased in proportion to its prolongation.

Art. 256.—If the discharge of the vessel be voluntarily made at a nearer place than that of her original destination, no deduction is to be made from their wages.

Art. 257.—If the seamen be engaged for a share in the profit or freight of the voyage, no indemnity shall be due to them, nor daily wages in consequence of its rupture, delay or prolongation occasioned by force majeure.

If the rupture, delay, or prolongation happen by the act of the shippers, the crew shall have a share in the indemnities which may be adjudged to the vessel.

These indemnities are divided between the owner of the vessel and the crew, in the same proportion as the freight would have been.

If the impediment happen by the act of the master or the owners, they shall be liable for indemnities due to the crew.

Art. 258.—In case of capture, stranding, or shipwreck, with a total loss of the vessel and cargo, the seamen are not entitled to any wages.

They are not obliged to refund the advances received on their wages.

Art. 259.—If some part of the vessel be saved the seamen engaged by the voyage or by the month are to be paid their wages already due out of the wreck thus saved.

If the wreck be not sufficient, or if there be only goods saved, they shall be paid their wages subsidiarily out of the freight.

Art. 260.—The seamen engaged on a share of the freight are to be paid their wages solely out of the freight in proportion to what the master receives.

Art. 261.—In whatever manner the seamen may be hired, they are to be paid their day's work while employed in saving the wreck and the effects on board.

Art. 262.—Seamen are to be paid their wages, and receive medical treatment at the expense of the ship, if they fall sick during the voyage, or be injured in the service of the vessel.

Art. 263.—The seamen are to receive medical treatment at the expense of the ship and cargo if they be wounded in defending the ship against enemies or pirates.

Art. 264.—If a seaman leave the ship without permission, and be wounded or injured on shore, the expense of medical treatment shall be at his own charge; he may even be dismissed by the captain.

His wages in this case shall be paid him only in proportion to the time he shall have served.

Art. 265.—In the case of the death of a seaman during the voyage, if engaged by the month, his wages shall be due to his heirs or assigns up to the day of his decease.

If seamen be engaged by the voyage, one-half of their wages shall be due if they die on the voyage out or at the port of destination.

The whole of their wages shall be due, if they die on the voyage home.

If seamen be engaged on the profit or freight of the vessel, their whole proportion shall be due if they die after the commencement of the voyage.

The wages of seamen killed in defending the ship shall be entirely due for the whole voyage, if the ship arrive safe.

Art. 266.—Seamen who are taken on board of the ship, and made slaves, can have no claim on the master, owners, or freighters for the payment of their ransom.

They shall be paid their wages up to the day of their captivity.

Art. 267.—If a seaman be taken and made slave, in consequence of being sent out at sea, or

on shore, on the service of the ship, he shall have a right to the full payment of his wages.

He shall be entitled to an indemnity for his ransom if the ship arrive safe.

Art. 268.—The indemnity is due by the owners of the vessel if the seaman has been sent out at sea, or on shore, on the service of the vessel.

The indemnity is due by the owners of the vessel and of the cargo, if the seaman has been sent out at sea, or on shore, in the service of the vessel and cargo.

Art. 269.—The amount of the indemnity is fixed at 600 fs. (£24 sterling.)

The collection and application of such indemnity shall be made according to the mode determined by the Government, in a regulation relative to the ransom of captives.

Art. 270.—Every seaman who produces satisfactory proof of having been discharged without a valid cause has a right to indemnity from the master.

The indemnity is fixed at one-third of the seaman's wages, if the discharge took place before the commencement of the voyage.

The indemnity is fixed at the whole amount of his wages and his expenses of return, if the discharge took place during the course of the voyage.

The master cannot, in either of the above cases, demand the amount of the indemnity from the owners of the vessel.

There is no right to indemnity if the seaman be discharged before the completion of the shipping Articles.

In no case can the master discharge a seaman in a foreign country.

Art. 271.—The ship and the freight are specially bound for the seamen's wages.

Art. 272.—All the provisions of the law concerning the wages, medical treatment, and ransom of seamen are equally applicable to the officers and other persons of the crew.

TITLE VI.

OF CHARTER-PARTIES AND FREIGHT.

Art. 273.—Every agreement for hiring a vessel, called a charter-party, must be in writing.

It specifies:—

The name and the tonnage of the vessel;

The name of the captain;

The names of the charterer and the freighter, that is, the owner and the merchant;

The place and the time agreed upon for the lading and the discharge;

The rate of freight;

Whether the freight be total or partial, that is, for the whole or a part of the vessel;

The demurrage or indemnity agreed upon in cases of delay.

Art. 274.—If the time of lading and discharge of the vessel be not fixed by the agreement between the parties, it shall be regulated by the usage of the places of lading and discharge.

Art. 275.—If the vessel be freighted by the month, and if there be no agreement to the contrary, the freight runs from the day of the sailing of the vessel.

Art. 276.—If before the departure of the vessel an interdiction of commerce take place with the country to which she is bound, the charter-party or agreement between the parties is dissolved, without any liability on either side for damages.

The shipper is liable for the expenses of lading and unlading his goods.

Art. 277.—If force majeure prevent the vessel, but only for a short time, from putting to sea, the charter-party or agreement subsists, and there is no cause for damages on account of the delay.

The agreement remains equally in force, and there can be no increase of the rate of freight if the detention by force majeure happen during the voyage.

Art. 278.—The shipper may, during the detention of the vessel, cause his goods to be unladen at his own expense, on condition of reshipping them, or of indemnifying the master.

Art. 279.—In case of blockade of the port whither the vessel is bound, the master is required, if he have no contrary orders, to go to one of the neighbouring ports of the same nation into which he may be permitted to enter.

Art. 280.—The vessel, the rigging and apparel, the freight, and the goods laden on board, are respectively bound for the performance of the charter-party or agreement between the parties.

TITLE VII.

OF THE BILL OF LADING.

Art. 281.—The bill of lading must express the nature and the quantity, as well as the species or qualities of the articles to be transported.

It mentions:—

The name of the shipper;

The name and the address of the person to whom the shipment is consigned;

The name and the domicile of the captain or master;

The name and the tonnage of the vessel;

The place of departure and of destination.

It declares:—

The rate of freight.

It exhibits in the margin the marks and numbers of the articles or packages to be transported.

The bill of lading may be to order, or to bearer, or to some person named therein.

Art. 282.—Each bill of lading is made in sets of at least four:—

One for the shipper;

One for the person to whom the goods are addressed;

One for the master ;

One for the owner of the vessel.

These four original bills are to be signed by the shipper and by the master within twenty-four hours after the delivery of the goods on board.

The shipper is required to furnish the master, within the same space of time, with the custom-house acquittances or certificates for the goods shipped.

Art. 283.—The bill of lading, drawn up in the form above prescribed, is legal evidence between all the parties interested in the shipment, and between them and the insurers.

Art. 284.—In case of variation between the bills of lading of the same set, for the same shipment, that which is in the hands of the master shall be valid if it be filled up in the handwriting of the shipper, or his agent or factor; and that which is produced by the shipper or the consignee shall be followed if it be filled up in the handwriting of the master.

Art. 285.—Every factor or consignee who shall have received the goods mentioned in the bills of lading or charter-parties, shall be bound to give a receipt for the same to the master, if he demand it, under the penalty of being liable for all expenses and damages, even for those of delay.

TITLE VIII.

OF THE FREIGHT.

Art. 286.—The price of the hire of a ship or other vessel is called freight.

It is regulated by the agreement between the parties.

It is evidenced by the charter-party, or by the bill of lading.

It may be for the whole or a part of the vessel, for an entire voyage, or for a limited time, by the

ton, hundredweight, in gross or in detail, with the designation of the tonnage of the vessel.

Art. 287.—If the entire ship be let on freight, and the merchant do not fill her up, the master cannot take other goods on board without the merchant's consent.

The merchant is entitled to the freight of goods which are put on board to complete the lading of the ship, the whole of which he has chartered.

Art. 288.—The merchant who has not laden the quantity of goods stipulated by the charter-party is bound to pay the freight of the full cargo which he engaged to furnish.

If he load more, he must pay for the overplus at the rate regulated by the charter-party.

If, however, the merchant, without having laden anything on board, break off the voyage before the departure of the vessel, he shall pay, as an indemnity to the master, one-half of the freight agreed upon by the charter-party for the whole cargo which he was to put on board.

If the vessel has received a part of her cargo, and depart without being full, the whole freight will be due to the master.

Art. 289.—The master who has declared the vessel to be of a greater burden than she is, shall answer in damages to the merchant.

Art. 290.—The declaration of the captain is not reputed to be false if the error do not exceed the fortieth part of the real tonnage of the vessel, or if the declaration be conformable to the certificate of measurement.

Art. 291.—If the vessel be laden by different shippers, whether by the hundredweight, ton, or in gross, the merchant may withdraw his goods before the departure of the vessel, on paying half the freight.

He shall bear the expenses of lading, as well as of unlading, and of relading other goods, which it may be necessary to displace, and also of demurrage.

Art. 292.—The master may cause to be landed,

in the place of lading of his vessel, any goods found on board which have not been reported to him; or he may take the freight at the highest rate paid in that place for goods of the same kind.

Art. 293.—The shipper who withdraws his goods during the voyage is bound to pay the whole freight and all expenses occasioned by the unloading; if the goods be taken out on account of the misconduct of the master, the latter is answerable for all the expenses.

Art. 294.—If the vessel be detained at her departure, or in the course of her voyage, or at the place of her discharge, by the act of the charterer, he shall bear all the expenses of the delay.

If the ship, being chartered out and home, come back without a lading, or with an incomplete lading, the whole freight is due to the master, and also compensation for any delay.

Art. 295.—The charterer has a right to damages from the master if, by his act, the vessel has been arrested or detained at her departure during the voyage or at the port of discharge.

These damages are determined by referees.

Art. 296.—If the master be obliged to have the vessel repaired during the voyage, the charterer is bound to wait, or to pay the whole freight.

In case the vessel cannot be repaired, the master is bound to hire another.

If the master cannot hire another vessel, the freight is due only in proportion to the voyage performed.

Art. 297.—The master loses his freight, and is answerable in damages to the charterer, if the latter prove that when the vessel sailed she was not seaworthy.

This proof is admissible even if in contradiction to the certificate of survey at her departure.

Art. 298. (Thus modified by the Law of 14th June, 1841.)—Freight is due for goods which the master has been obliged to sell to furnish provisions, repairs, and other necessities for the vessel, he being

accountable for the value of the goods thus sold, at the price of the rest, or of similar goods of the same quality, at the place of discharge, if the ship arrive safe.

If the vessel be lost, the master shall account for the goods at the rate at which he sold them, retaining likewise the freight according to the bill of lading, saving, in these two cases, the right reserved to shipowners by paragraph 2 of Art. 216.

When, from the exercise of this right, a loss arises to the parties whose goods have been sold or pledged, it shall be proportionately spread over the value of such goods, and over all those which arrive at their destination, or which have been saved from shipwreck after the occurrence at sea which necessitated the sale or pledge thereof.

Art. 299.—If an interdiction of commerce take place with the country to which the ship is bound, and she be obliged to return with her lading, the master shall be entitled only to the freight for the outward voyage, though the vessel be freighted out and home.

Art. 300.—If the vessel be arrested in the course of her voyage by order of a sovereign power—

No freight is due for the time of her detention, if the vessel be chartered by the month; nor increase of freight, if chartered for the voyage.

The wages and maintenance of the crew during the detention are reputed an average loss.

Art. 301.—The master is to be paid the freight of goods thrown overboard for the common safety, at the charge of a general contribution.

Art. 302.—No freight is due for goods lost by shipwreck or stranding, pillage of pirates, or capture of enemies.

The master is bound to refund the freight if paid in advance, unless there be a contrary agreement.

Art. 303.—If the vessel and the cargo be ransomed, or if the cargo be saved from shipwreck, the master shall be paid the freight as far as the place of capture or shipwreck.

He shall be paid his full freight, he contributing to the ransom if he carry the goods to their place of destination.

Art. 304.—The contribution for the ransom is to be made on the value of the goods at the market price in the place of their delivery, deducting the costs and expenses; and on one-half the value of the ship and the freight.

The wages of the seamen are not subject to contribution.

Art. 305.—If the consignee refuse to receive the goods, the master may, by judicial authority, cause part of them to be sold for the payment of his freight, and the remainder to be deposited.

If they be inadequate to the payment of the freight, he preserves his remedy against the merchant who shipped them.

Art. 306.—The master cannot retain the goods in his vessel in default of payment of his freight.

He may, whilst the vessel is unloading, require the goods to be deposited in the hands of a third person until the payment of his freight.

Art. 307.—The master has a lien and prior right for freight on the goods which were laden on board his vessel for the space of fifteen days after their delivery, if they have not passed into the hands of third persons.

Art. 308.—In case of failure of the shippers or claimants before the expiration of the fifteen days, the master is privileged over all the other creditors for the payment of his freight and the averages due to him.

Art. 309.—In no case can the shipper demand a diminution in the price of the freight.

Art. 310.—The shipper cannot abandon for the freight goods which are diminished in value, or damaged from internal defect, or by accident.

If, however, casks containing wine, oil, honey and other liquids, have leaked out so much that they are empty, or nearly empty, such casks may be abandoned for the freight.

TITLE IX.

OF CONTRACTS OF BOTTOMRY AND RESPONDENTIA.

Art. 311.—Contracts of bottomry and respondentia are made before a notary, or sous seing privé.

They specify:—

The principal lent, and the rate of maritime interest agreed upon ;

The subject on which the loan is effected ;

The names of the vessel and the master ;

Those of the lender and the borrower ;

Whether the loan be for one voyage ;

For what voyage, and for what space of time ;

The period of repayment.

Art. 312.—Every lender on bottomry and at respondentia in France is required to cause his contract to be registered in the clerk's office of the Tribunal of Commerce, within ten days from its date, under the penalty of forfeiting his lien and privilege.

If the contract be made in a foreign country, it is subject to the formalities prescribed in Art. 234.

Art. 313.—Every bottomry or respondentia bond, if it be payable to order, may be negotiated and transferred by means of endorsement.

In such cases, the transfer of this instrument has the same effects and gives rise to the same rights of action against sureties as any other commercial document.

Art. 314.—The guaranty of payment by endorsement or otherwise does not extend to the maritime interest, unless the contrary be expressly stipulated.

Art. 315.—Loans on bottomry, or at respondentia, may be effected :—

On the hull and keel of the ship ;

On the rigging and apparel ;

On the outfits and provisions ;

On the cargo ;

On the whole of these objects conjointly, or on some determinate part of each or either of them.

Art. 316.—Loans on bottomry, or at respondentia, made for a sum exceeding the value of the objects on which they are effected, may be declared void on the demand of the lender, if fraud on the part of the borrower be proved.

Art. 317.—If there be no fraud, the contract is valid to the extent of the value of the objects on which the loan is effected, according to the valuation made or agreed upon.

The balance due on the amount borrowed is to be repaid with interest at the current rate of the place.

Art. 318.—All loans on the freight to be earned by the vessel, and on the expected profit of the goods, are prohibited.

The lender, in this case, has a right only to the reimbursement of his principal, without any interest.

Art. 319.—No loan of the nature of bottomry, or respondentia, can be made to seamen on their wages or voyages.

Art. 320.—The vessel, her rigging and apparel, her outfit and provisions, and even the freight already earned, are subject to a lien, by privilege, for the principal and interest of money lent on bottomry, on the hull and keel of the vessel.

The cargo is equally bound for the principal and interest of money lent at respondentia on the cargo.

If the loan has been made on some particular article belonging to the ship or cargo, the lien takes effect only on that article, and in proportion to its fixed valuation.

Art. 321.—A loan on bottomry, made to the master in the place of residence of the owners of the vessel, without their authorisation given under notarial deed or their intervention in the act, gives a right of action and privilege only on the share or interest which the master may have in the vessel and freight.

Art. 322.—The sums lent, even in the place of residence of the parties interested in a vessel, for repairs and provisions, are a lien on the shares of the owners who shall not have furnished their contingent to fit the vessel for sea within 24 hours allowed after the citation which shall have been made to them.

Art. 323.—The loans made for the last voyage of the vessel are to be repaid in preference to the sums lent for a preceding voyage, even though it should be shown that the latter were left unpaid by continuation, or renewing.

The sums lent during the voyage are preferred to those which may have been lent before the departure of the vessel; and if there be several loans during the same voyage, the last shall be preferred to that which preceded it.

Art. 324.—The lender at respondentia, on goods laden on board a vessel designated in the contract, is not to bear the loss of the goods, even when occasioned by the perils of the sea, if they have been shipped on board another vessel, unless it be legally proved that this shipment was the effect of force majeure.

Art. 325.—If the object on which the loan on bottomry or at respondentia was made be entirely lost, and the loss has happened by accident within the time and the place of the risk stipulated, the sum lent cannot be demanded.

Art. 326.—The damage, diminution, and loss which may happen from the perishable nature of an article, or which are occasioned by the act of the borrower, are not at the charge of the lender.

Art. 327.—In case of shipwreck, the payment of the sums borrowed on bottomry and at respondentia is reduced to the value of the property saved, and subject to the hypothecation, deduction being made of the expenses of salvage.

Art. 328.—If the period of the risk be not determined by the contract, it begins, with respect to the ship, her rigging, tackle, apparel, and pro-

visions, from the day of her sailing until the day of her anchoring or mooring in the port or place of her destination.

With respect to the goods, the period of the risk begins from the day of their being laden on board the vessel or in the lighters, to be carried on board, until the day of their being landed.

Art. 329.—He who borrows at *respondentia* on goods is not discharged by the loss of the ship and cargo unless he prove that there were on board, for his account, effects to the amount of the sum borrowed.

Art. 330.—The lenders on bottomry and at *respondentia* contribute to a general average, in discharge of the borrowers.

Particular average is also at the charge of the lenders if there be no agreement to the contrary.

Art. 331.—If there be a contract of bottomry and of insurance on the same vessel, or on the same cargo, the proceeds of the effects saved from shipwreck are divided between the lender on bottomry for his principal solely, and the insurer for the amount insured, rateably according to their respective interests, without prejudice to the privileges established by Art. 191.

TITLE X.

OF INSURANCE.

SECTION I.

OF THE CONTRACT OF INSURANCE, ITS FORM AND OBJECT.

Art. 332.—The contract of insurance is drawn in writing.

It is dated the day on which it is subscribed.

It mentions whether signed before or after noon.

It may be made *sous seign privée*.

It cannot contain any blanks.

It expresses:—

The name and place of residence of the person for whose account the insurance is made, his quality of owner or commissionnaire;

The name and description of the vessel;

The name of the master;

The place where the goods have been, or are to be shipped;

The port whence the vessel has sailed, or is about to sail;

The ports or harbours in which she is to lade or unlade;

Those at which she is to touch or trade;

The nature and the value, or estimate of the goods, or subject insured;

The time when the risk is to commence and to end;

The sum insured;

The premium, or cost of the insurance;

The submission of the parties to arbitrators, in case of dispute, if it has been so agreed;

And generally, every other condition or covenant stipulated between the parties.

Art. 333.—The same policy may contain several insurances, whether on account of the nature of the goods, or the rate of premium, or the different insurers.

Art. 334.—The subject of insurance may be:—

The hull and keel of a vessel, empty or laden, armed or not armed, alone or in company;

The rigging and apparel;

The outfit and equipment;

The provisions;

The sums lent on bottomry or at respondentia;

The goods on board, and every other article or thing capable of a valuation in money, and subject to the risks of navigation.

Art. 335.—Insurance may be made on the whole or a part of the said objects, conjointly or separately.

It may be made in time of peace or of war, before or during the voyage of the vessel.

It may be made for the voyage out and home, or only for one of the two; for the whole voyage, or a limited time.

For all voyages or transportations by sea, rivers, or navigable canals.

Art. 336.—In case of fraud in the valuation of the effects insured, of misrepresentation, or of falsification, the insurer may cause a verification and estimate to be made of the objects insured, without prejudice to any other proceedings, either civil or criminal.

Art 337.—Shipments made in the ports of the Levant, on the coasts of Africa, and in other parts of the world, for Europe, may be insured on any vessel in which they may have taken place, without designating the vessel or the master.

Goods may, in this case, be insured without designating their nature and species.

But the policy must mention the name of the person to whom the shipment is made, or is to be delivered, unless there be a stipulation to the contrary in the policy of insurance itself.

Art. 338.—Every article the value of which is stated in the policy in foreign money, is to be estimated at the price of the foreign money in France, according to the current rate at the time of signing the policy.

Art. 339.—If the value of the goods be not determined by the policy, it may be proved by the invoices or books of the shipper, in default of which proof the valuation is to be made according to the current price at the time and in the place of the shipment, including all duties and expenses until laden on board.

Art. 340.—If insurance be made on the return voyage from a country where commerce is carried on only by barter, and the valuation of the goods be not made in the policy, it shall be regulated

according to the value of those which were given in exchange, upon adding the expenses of transport.

Art. 341.—If the contract of insurance do not fix the duration of the risk, it commences and ends at the periods regulated by Art. 328, for contracts of bottomry and respondentia.

Art. 342.—The insurer may cause to be re-insured by others, to cover himself, the property which he has insured.

The insured may have insurance effected on the premium and charges of insurance.

The premium of reinsurance may be less or greater than that of the first insurance.

Art. 343.—The increase of premium stipulated in time of peace for a state of war which may take place, and the proportion of which is not determined by the contract of insurance, shall be regulated by the tribunals, having regard to the risks, circumstances and stipulations of each policy of insurance.

Art. 344.—In case of the loss of goods insured and laden for the account of the master, on board the vessel which he commands, he is required to prove to the insurers the purchase of the goods, and to furnish a bill of lading of them, signed by two of the principal persons of the crew.

Art. 345.—Every person belonging to the crew, and every passenger who brings from a foreign country goods on which insurance has been effected in France, is required to leave a bill of lading of them in the place of their shipment, in the hands of the French Consul, and where there is no French Consul, in the hands of a French merchant of good standing, or the magistrate of the place.

Art. 346.—If the insurer fail before the risk is ended, the insured may demand security or the dissolution of the contract.

The insurer has the same right in case of the failure of the insured.

Art. 347.—The contract of insurance is void if the subject-matter of it be:—

The freight of goods still existing on board the vessel ;

The expected profit on goods ;

The wages of seamen ;

The sums lent on bottomry or at respondentia ;

The maritime interest on money lent on bottomry or at respondentia ;

Art. 348.—Any concealment, any misrepresentation on the part of the insured, any variation between the contract of insurance and the bill of lading which would diminish the character of the risk or change the subject-matter of it annuls the insurance.

The insurance is void, even where the concealment, misrepresentation, or variation, would have had no influence on the damage or loss of the property insured.

SECTION II.

OF THE OBLIGATIONS OF THE INSURER AND THE INSURED.

Art. 349.—If the voyage be broken up before the departure of the vessel, even by the act of the insured, the insurance is void ; the insurer receives, by way of indemnity, a half per cent. on the sum insured.

Art. 350.—The insurer is liable for all losses and damages which may happen to the property insured, by storm, shipwreck, stranding with partial wreck, running foul, forced changes of the course of the voyage or of the vessel ; by jettison, fire, capture, pillage, arrest by order of any Government, declaration of war, reprisals, and generally by every other accident of the sea.

Art. 351.—Any change of the route, voyage, or vessel discharges the insurer, and he is not liable for any loss or damage occasioned by the act of the insured, but he is entitled to the premium if the risk has commenced.

Art. 352.—The insurer is not liable for any damage, diminution or loss which may happen from the inherent defect of the article, or is caused by the act and fault of the owners, freighters, or shippers.

Art. 353.—The insurer is not liable for the misconduct or faults of the captain and crew, known by the name of barratry of the master, unless there be an agreement to the contrary.

Art. 354.—The insurer is not chargeable with pilotage, towage and harbour pilotage, nor any species of duty imposed on the vessel and cargo.

Art. 355.—Goods which, by their nature, are subject to special detriment or diminution, as grain, salt, or merchandise liable to leakage, must be designated in the policy, in default of which the insurer will not be answerable for the damages or losses which may happen to these articles, unless, however, the insured were ignorant of the nature of the cargo when the policy was signed.

Art. 356.—If the subject of insurance be goods out and home, and if the vessel, having reached her outward port, bring home no lading, or an incomplete one, the insurer receives only two proportional third parts of the premium agreed upon, unless there be a contrary stipulation.

Art. 357.—A contract of insurance, or of re-insurance, entered into for a sum exceeding the value of the property on board, is void with respect to the rights of the insured only, if deception or fraud on his part be proved.

Art. 358.—If there be neither deception nor fraud, the contract is valid to the extent of the amount of the goods laden on board, according to the valuation made or agreed upon.

In case of loss, the insurers are bound to contribute to the payment, each in proportion to the sum by him subscribed.

They receive no premium for the surplus amount insured, but only an indemnity of a half per cent.

Art. 359.—If there exist several contracts of

insurance, made without fraud on the same cargo, and the first policy cover the entire value of the goods laden on board the vessel, it shall alone be in force.

The insurers who have signed the subsequent policies are discharged; they receive only a half per cent. on the sum insured.

If the entire value of the goods shipped be not covered by the first contract, the insurers who have signed the subsequent policies are answerable for the deficiency, according to the order of the date of the policies.

Art. 360.—If there be goods on board to the full amount of the sums insured, in case of a partial loss, the insurers shall all contribute to the payment rateably in proportion to the sums insured by them respectively.

Art. 361.—If insurance be made separately on goods which are to be shipped in several vessels, specified in the policy, with the sum insured on each, and if the whole shipment be made in a single vessel, or in a less number than were designated in the contract, the insurer is liable only for the sum which he has insured in the vessel or vessels which have received the shipment, notwithstanding the loss of all the vessels specified; and he shall, nevertheless, receive a half per cent. on the sums the insurance of which is rendered void.

Art. 362.—If the captain has liberty to touch at different ports, in order to complete or change his lading, the insurer runs the risk of the goods insured only when they are on board the vessel, unless there be an agreement to the contrary.

Art. 363.—If the insurance be made for a limited time, the insurer is discharged after the expiration of the time, and the insured may cause a new insurance to be made against further risks.

Art. 364.—The insurer is discharged from the risks, and entitled to the premium if the insured send the vessel to a place more distant than that which is specified in the policy, although in the same course.

The insurance has its full effect though the voyage be shortened.

Art. 365.—Every insurance made after the loss or arrival of the property insured is void, if a presumption exist that before the signing of the policy the insured might have been informed of the loss or the insurer of the arrival of the subject of the insurance.

Art. 366.—The presumption exists (independently of other proof) if, by reckoning three-quarters of a myriamètre (about four miles) per hour, it be established that from the place of arrival or loss of the vessel, or from the place whence the first news of either has arrived, advice might have been brought to the place where the contract of insurance was entered into before the signing of the same.

Art. 367.—If, however, the insurance be made, whether the news be good or bad (that is on property “lost or not lost”), the presumption mentioned in the preceding Articles is not admitted.

The contract is annulled only on proof that the insured knew of the loss, or the insurer the arrival of the vessel before signing the policy.

Art. 368.—In case concealment be proved against the insured, the latter pays to the insurer a double premium.

In case concealment be proved against the insurer, the latter pays to the insured a sum double the amount of the premium agreed upon.

Either of them against whom the proof of concealment is established is liable to a criminal prosecution.

SECTION III.

OF ABANDONMENT.

Art. 369.—Abandonment of the subject-matter insured may be made in cases of:—

Capture;

Shipwreck;

Stranding with partial wreck;

Unseaworthiness of the vessel occasioned by the perils of the sea;

Arrest of a foreign power;

Loss or damage of the property insured if amounting to at least three-fourths of its value;

It may also be made in case of arrest on the part of the Government, after the commencement of the voyage.

Art. 370.—It cannot be made before the commencement of the voyage.

Art. 371.—All other damages are reputed average losses, and are to be regulated between the insurers and the insured in proportion to their respective interests.

Art. 372.—The abandonment of the subject-matter insured cannot be either partial or conditional.

It extends only to the property which is the subject-matter of the insurance and the risk.

Art. 373.—(Thus modified by the Law of 3rd May, 1862.) Abandonment must be made to the insurers within the term of six months from the day of receiving information of the loss having happened in the ports or on the coast of Europe, or on those of Asia, Africa, or the Mediterranean Sea, or in case of capture within the same space of time from the receipt of news that the captured vessel has been carried into one of the ports or places situated on the coasts above mentioned; within the term of a year after information either of the loss having happened, or the prize carried to Africa beyond the Cape of Good Hope, or to America beyond Cape Horn; within the term of 18 months after information of the loss having happened or the prize carried to any other part of the world. And these periods being respectively elapsed, the insured shall no longer be permitted to abandon.

Art. 374.—In cases where abandonment may be made, and in every case of loss or accident at the risk of the insurers, the insured is required to

make known to the insurer the information he has received.

The notice must be given within three days after the receipt of the information.

Art. 375.—(Thus modified by Law of 3rd May, 1862.) If, after the expiration of six months, reckoning from the day of the departure of the vessel, or from the day of receiving the last news from her for ordinary voyages,

After the expiration of one year for long voyages,

The insured declare that he has received no news from his vessel, he may abandon the property insured to the insurer, and demand the payment of the insurance, without being obliged to prove the loss.

After the expiration of the respective terms of six months and one year, the insured is allowed the time established by Art. 373 in which to prosecute his claim against the insurer.

Art. 376.—In the case of an insurance for a limited time, after the expiration of the terms established as above for ordinary and long voyages respectively, the loss of the vessel is presumed to have happened within the period of the risk.

Art. 377.—(Thus modified by Law of 14th June, 1854.) Those are reputed long voyages which are made beyond the limits hereinafter mentioned:—To the south, the 30th degree of north latitude; to the north, the 72nd degree of north latitude; to the west, the 15th degree of longitude from the meridian of Paris; to the east, the 44th degree of longitude from the meridian of Paris.

Art. 378.—The insured may, together with the notice mentioned in Art. 374, either make the abandonment, with a demand on the insurer to pay the sum underwritten, within the period fixed by the policy, or reserve to himself the right of making the abandonment within the periods fixed by law.

Art. 379.—The insured is required, on making the abandonment, to declare all the insurances he has made, or caused to be made, even those which

he has ordered, and also what money he has taken up on bottomry or at respondentia; in default of which the term of payment, which was to commence running from the date of the abandonment, shall be suspended until the day in which he shall make the aforesaid declaration; but there shall not thence result any prolongation of the time allowed for making the abandonment.

Art. 380.—In case of a fraudulent declaration, the insured shall be deprived of the benefit of the insurance, and shall be bound to pay the sums borrowed on bottomry or respondentia, notwithstanding the loss or capture of the vessel.

Art. 381.—In case of shipwreck, or stranding with partial wreck, the insured must use his best exertions to save the property at hazard, without prejudice to the right of abandonment to be made in due time and place.

The expenses attending the recovery are allowed him on his affirmation, to the extent of the value of the property saved.

Art. 382.—If the time of payment be not fixed by the contract, the insurer is required to pay the sum underwritten within three months from the date of the abandonment.

Art. 383.—The documents in proof of the property and of the loss are to be exhibited to the insurer before he can be proceeded against for the payment of the sums insured.

Art. 384.—The insurer is admitted to adduce proof of facts in contradiction to those produced by the insured.

The admission of this proof does not suspend the judgment against the insurer for the provisional payment of the sum insured under the obligation of the insured to give security.

The engagement of the security is extinguished after the lapse of four years, if there has been no prosecution.

Art. 385.—The abandonment being notified and accepted, or judged valid, the property insured

belongs to the insurer, reckoning from the date of the abandonment.

The insurer cannot, under the pretext that the vessel has returned, be excused from paying the sum insured.

Art. 386.—The freight of goods saved, even though paid in advance, is comprised in the abandonment of the vessel, and equally belongs to the insurer, without prejudice to the rights of the lenders on bottomry, to those of the seamen for their wages, and to the charges and expenses during the voyage.

Art. 387.—In case of arrest by a sovereign power, the insured is required to give notice thereof to the insurer within three months after the receipt of the news.

The abandonment of the property arrested cannot be made until after the term of six months from the notification, if the arrest took place in the seas of Europe, in the Mediterranean, or in the Baltic.

Until after the term of a year, if the arrest took place in a more distant country.

These terms do not begin until the day of notification of the arrest.

In case the goods arrested should be of a perishable nature, the terms above-mentioned are reduced to a month and a half in the first case and to three months in the second.

Art. 388.—During the periods mentioned in the preceding Article, the insured are bound to use their best endeavours to obtain the release of the property detained.

The insurers on their part may, in concert with the insured or separately, employ the means in their power to the same end.

Art. 389.—Abandonment on the ground of unseaworthiness cannot be made if the vessel stranded may be got off, refitted, and put in a state to continue her course for the place of her destination.

In this case the insured preserves his remedy against the insurers for the expenses and damages occasioned by the stranding.

Art. 390.—If the vessel has been declared unseaworthy, the insured on the cargo is required to give notice of it, within the space of three days from the receipt of the news.

Art. 391.—The captain is bound in this case to use every endeavour to procure another vessel for the purpose of transporting the goods to the place of their destination.

Art. 392.—The insurer runs the risk of the goods laden in another vessel, in the case provided for by the preceding Article, until their arrival and discharge.

Art. 393.—The insurer is besides liable for average loss, charge of unlading the goods, storage, reshipping, the additional freight, and every other expense which shall have been incurred in saving the goods, to the extent of the sum insured.

Art. 394.—If, within the periods of time prescribed by Art. 337, the captain has not been able to find a vessel in which to reship the goods, and carry them to the place of their destination, the insured may abandon them.

Art. 395.—In cases of capture, if the insured has not been able to give information of the same to the insurer, he may ransom the property without waiting his orders.

The insured is required, as soon as he has it in his power, to give notice to the insurer of the arrangement which he has made with the captors.

Art. 396.—The insurer has the option of taking the arrangement on his own account, or of renouncing it; he is required to make known his election to the insured within 24 hours after receiving notice of the composition.

If he elect to take the arrangement for his benefit, he is bound to contribute, without delay, to the payment of the ransom according to the terms of the agreement, in proportion to his interest; and he continues to run the risks of the voyage, conformably to the contract of insurance.

If he declare that he renounces the benefit of the

composition, he is bound to pay the sum insured, without having any pretensions to the property ransomed.

When the insurer has not given notice of his determination within the time above-mentioned, he is understood to have renounced the benefit of the arrangement.

TITLE XI.

OF AVERAGE.

Art. 397.—All extraordinary expenses incurred for the ship and the cargo, conjointly or separately—

All damage happening to the vessel or goods, from the time of their lading and departure until their arrival and discharge—

Are reputed average losses.

Art. 398.—In default of special agreements between the parties, average contributions are regulated conformably to the provisions hereafter mentioned.

Art. 399.—Averages are of two kinds: gross or general average, and simple or particular average.

Art. 400.—The following are general averages:—

1st. Things given by composition for the ransom of the vessel and cargo.

2nd. Things which are thrown overboard.

3rd. Cables or masts broken or cut away.

4th. Anchors and other articles abandoned for the common safety.

5th. Damage occasioned by jettison to the goods remaining in the vessel.

6th. Medical treatment and maintenance of the seamen wounded in defending the vessel, the wages and maintenance of the seamen during the detention, when the vessel is arrested on the voyage by order of a sovereign power, and during the reparations of the damages necessarily sustained for the common safety if the vessel be freighted by the month.

7th. The expenses of unlading to lighten the ship, in order to facilitate her entrance into a harbour or river when the vessel is forced to seek shelter by stress of weather or the pursuit of an enemy.

8th. The expenses incurred in getting off a vessel stranded, to prevent a total loss or seizure.

And, in general, the damages necessarily suffered, and the expenses incurred, in consequence of deliberations taken for the security and common safety of the vessel and goods, from the time of their lading and departure until their arrival and discharge.

Art. 401.—General average is borne by the goods on board, and by one-half the value of the vessel and freight, rateably according to their respective values.

Art. 402.—The price of the goods is established by their value at the place of discharge.

Art. 403.—The following are particular averages:—

1st. The damage happening to goods by their inherent defect, by stress of weather, seizure, shipwreck, or stranding.

2nd. The expenses incurred in saving them.

3rd. The loss of cables, anchors, sails, masts, cordage, caused by storms or other accidents of the sea.

The expenses resulting from any detention in the course of the voyage, whether occasioned by the accidental loss of the aforesaid articles, by the want of provisions, or by the necessity of stopping a leak.

4th. The maintenance and wages of the crew during the detention, when the vessel is arrested on the voyage by order of a sovereign power, and during the reparations necessary to be made, if the vessel be freighted by the voyage.

5th. The maintenance and wages of the seamen during quarantine, whether the vessel be freighted by the month or the voyage.

And, in general, the expenses incurred and the damage sustained by the vessel only, or by the cargo solely, from the time of the lading and departure until the arrival and discharge.

Art. 404.—Particular averages are borne and paid by the owner of the thing which has sustained the damage, or occasioned the expense.

Art. 405.—The damage happened to goods by the fault of the captain, in not having well fastened the hatches, lashed the ship, or provided good hoisting tackle, and by every other accident proceeding from the negligence of the master or the crew, are also particular averages to be borne by the owners of the goods, but for which they have a remedy against the master, the ship and the freight.

Art. 406.—Harbour pilotage, towage and pilotage, in entering and going out of harbours and rivers, duties of clearance, search, reports, tonnage, beaconage, anchorage, and other duties on navigation, are not averages, but merely expenses at the charge of the vessel.

Art. 407.—In case of collision, if the occurrence was purely accidental, the damage is borne, without remedy, by the suffering vessel.

If the running foul proceeded from the fault of one of the captains, the damage is paid by the vessel which occasioned it.

If there be a doubt as to which of the two vessels was in fault in running foul, the damage is to be repaired at their common expense, in equal portions between them.

In these two last cases, the estimation of the damage is made by referees.

Art. 408.—A demand of average loss is not admissible, if the general average do not exceed one per cent. of the value of the ship and cargo, and if the particular average do not also exceed one per cent. of the value of the article damaged.

Art. 409.—The clause in a policy of insurance free from average exempts the insurers from all

average loss, whether general or particular, except in cases which authorise an abandonment; and in such instances the insured have the option between the abandonment and the claim for average loss.

TITLE XII.

OF JETTISON AND CONTRIBUTION.

Art. 410.—If, by stress of weather, or by the chasing of the enemy, the master thinks himself obliged, for the safety of the vessel, to throw overboard a part of his cargo, to cut away his masts, or abandon his anchors, he takes the advice of the persons interested in the cargo who may be on board the vessel, and of the principal men of the crew.

If there be a difference of opinion, that of the master and the principal men of the crew shall prevail.

Art. 411.—Things the least necessary, the most weighty, and of least value, are to be thrown overboard first, and afterwards the goods between decks, at the choice of the captain and by the advice of the principal persons of the crew.

Art. 412.—The captain is required, as soon as it is in his power, to commit to writing the consultation which took place.

The consultation expresses:—

The motives which have determined the jettison;

The articles thrown overboard or damaged;

It contains the signature of the persons who assisted in the consultation, or the motives of their refusal to sign;

It is transcribed on the ship's log-book.

Art. 413.—At the first port at which the vessel shall arrive, the master is required, within 24 hours after his arrival, to depose to the facts contained in the consultation transcribed on the log-book.

Art. 414.—The statement of the losses and damages

is made out in the place of the discharge of the vessel, at the instance of the master, by referees.

The referees are appointed by the Tribunal of Commerce if the discharge be made in a French port.

In places where there is no Tribunal of Commerce, the referees are appointed by the justice of the peace.

If the vessel be discharged in a foreign port, they are appointed by the French Consul; and where there is no French Consul, by the magistrate of the place.

The referees shall be sworn before they enter upon their duties.

Art. 415.—The goods thrown overboard are appraised, according to the price current of the place of discharge; their quality is ascertained by the production of the bills of lading and invoices, if there be any.

Art. 416.—The referees appointed in virtue of Art. 414 apportion the contribution for the losses and damages.

This contribution is rendered obligatory by the confirmation of the tribunal.

In foreign ports the contribution is rendered obligatory by the French Consul, or where there is no French Consul, by any competent tribunal in the place.

Art. 417.—The contribution for the payment of the losses and damages is made on the goods cast away and on those saved, and on one-half the value of the vessel and freight, in proportion to their value respectively at the port of delivery.

Art. 418.—If the quality of the goods has been misrepresented in the bill of lading, and they should be found of greater value, they contribute at the rate of their real valuation, if saved.

They are to be paid for according to the quality mentioned in the bill of lading if lost.

If the goods in question be of an inferior quality to that which is indicated by the bill of lading,

they contribute according to the quality therein mentioned, if saved.

They are to be paid for according to their real value, if thrown overboard or damaged.

Art. 419.—Ammunitions and provisions, and the clothes of the ship's company, do not contribute to the loss by jettison; the value of those thrown overboard shall be paid for by contribution on all the other property.

Art. 420. — The goods for which there is no bill of lading or declaration of the captain are not to be paid for if thrown overboard; they shall contribute if saved.

Art. 421. — The effects laden on the deck of the vessel contribute if saved.

If they be thrown overboard or damaged by the jettison, the owner is not admitted to make a demand of contribution; his only remedy is against the master.

Art. 422.—There is no ground for contribution on account of damage suffered by the vessel, except where the damage has been done to facilitate the jettison.

Art. 423.—If the jettison do not save the vessel, there is no ground for any contribution.

The goods saved in that case are not bound for the payment or indemnity of those which have been thrown overboard or [damaged.

Art. 424.—If the jettison save the vessel, and if, continuing her voyage, she should be afterwards lost—

The goods saved contribute to the loss by jettison, according to their value in the condition in which they are found, deducting expense of salvage.

Art. 425.—The effects thrown overboard in no case contribute to the payment of the damages happened since the jettison to the goods saved.

The goods do not contribute to the payment of the vessel lost or rendered unable to navigate.

Art. 426.—If, in consequence of a consultation, the hatches have been opened to take out the

goods, such goods contribute to the repairs of damage caused to the vessel.

Art. 427.—In case of the loss of goods put into lighters in order to lighten the ship in entering a port or a river, the contribution for the loss is made on the vessel and her whole cargo.

If the vessel perish with the rest of her cargo, the goods put into lighters do not contribute, although they reach the port in safety.

Art. 428.—In all the cases above mentioned, the master and mariners have a lien on the goods or their proceeds for the amount of the contribution.

Art. 429.—If, after the contribution has been made, the effects thrown overboard be recovered by the owners, they are bound to refund to the master and others interested what they have received in the contribution, deducting damages occasioned by the jettison and the expenses of recovery from the various parties.

TITLE XIII.

OF PRESCRIPTION (LIMITATION) OF ACTIONS.

Art. 430.—The master cannot acquire the property in the vessel by means of prescription.

Art. 431.—Actions for abandonment are barred after the periods expressed in Art. 373.

Art. 432.—All actions arising on contracts of bottomry, respondentia, or policies of insurance, are barred after five years from the date of the contract.

Art. 433.—All actions for the payment of the freight, the wages and pay of the officers, seamen and others of the ship's company, are barred at the expiration of one year after the voyage is ended.

For victuals furnished to the seamen by order of the captain, one year after the delivery.

For supplies of timber and other articles necessary for the construction, equipment, and victualling of the vessel, one year after the delivery.

For wages of workmen and work done, one year after the completion of the work.

All demands for the delivery of goods on board of a vessel, one year after the arrival of the vessel.

Art. 434.—The prescription cannot take effect if there be a written acknowledgment, obligation, account settled, or judicial citation.

TITLE XIV.

OF EXCEPTIONS OR BARS TO ACTIONS.

Art. 435.—Absolute exceptions to a right of action are admitted in the following cases:—

To all actions against the master and insurer for any damage which may have happened to the goods, if they have been received without protestation.

To all actions against the freighter for average loss, if the master has delivered the goods and received his freight without having made a protest.

To all actions for indemnity of damage caused by collision, in a place where the captain might have had his legal remedy and has made no claim.

Art. 436.—These protestations and claims are void if they be not made and notified to the opposite party within 24 hours, and if, within a month from their date, they be not followed by a judicial demand.

BOOK III.

OF BANKRUPTCY.

TITLE I.

Law passed the 28th of May, 1838.

CHAPTER I.

OF THE DECLARATION OF BANKRUPTCY AND ITS EFFECTS.

Art. 437.—Every trader who ceases his payments is in a state of bankruptcy.

The bankruptcy of a trader can be declared after his decease, in the event of his having died in a state of insolvency.

The declaration of bankruptcy cannot be pronounced d'office or demanded by the creditors, but within the year following the decease of the debtor.

Art. 438.—Every bankrupt must, within three days of the cessation of his payments, make a declaration thereof at the greffe of the Tribunal of Commerce of his domicile. The day of the cessation of payments is included in the three days.

In the case of the bankruptcy of a Société en nom collectif, the declaration must contain the name and

the indication of the domicil of each of the members. This declaration shall be made at the greffe of the tribunal of the district in which the principal place of business of the association is situate.

Art. 439.—The declaration of the bankrupt must be accompanied by a deposit of his balance-sheet, or explain the reason of the default of the debtor in depositing the same. The balance-sheet or statement must contain the enumeration and valuation of all the realty and personalty of the debtor, an account of moneys owing and moneys due, an account of profit and loss, and an account of expenses. The above statement must be certified as true, and signed and dated by the debtor.

Art. 440.—The bankruptcy is declared by a judgment of the Tribunal de Commerce, given either upon a declaration of the bankrupt himself, or upon the petition of one or more creditors, or by the tribunal of its own accord. The judgment is executory provisionally.

Art. 441.—The tribunal, by the judgment declaring the bankruptcy, or by a later judgment pronounced upon the report of the juge-commissaire, fixes either d'office, or, upon the application of any party interested, the period at which the cessation of payments shall be deemed to have taken place. In default of any special time being fixed, such cessation shall date from the judgment pursuant to which the bankruptcy was declared.

Art. 442.—Judgments rendered pursuant to the two preceding Articles shall be published, and extracts therefrom inserted in the newspapers, both in the place in which the bankruptcy was declared, and in all places in which the bankrupt possessed commercial establishments, according to the manner prescribed by Art. 42 of the present Code.

Art. 443.—The effect of the judgment declaring the bankruptcy is to dispossess the bankrupt from the date thereof of the administration of all his property, even of that devolving upon

him during his bankruptcy. From the date of the judgment all actions relating to realty or personalty must be brought by or against the syndics. The same rule applies to proceedings to issue execution, both as regards real and personal property. The tribunal can allow the bankrupt to intervene in all proceedings when it may deem expedient.

Art. 444. — All debts not matured become due by the bankrupt consequent upon the judgment declaring the bankruptcy. In the case of the bankruptcy of the maker of a promissory note, of the acceptor of a bill of exchange, or of the drawer in default of acceptance, the other parties liable must furnish security for the payment at maturity unless they prefer to pay at once.

Art. 445. — The judgment declaring the bankruptcy arrests, as regards the body of creditors, the running of interest upon all claims, not being privileged or secured by mortgage or pledge. Interest upon secured claims can only be allowed from the proceeds arising from the property mortgaged, pledged or privileged.

Art. 446. — The following acts are void, and of no effect as regards the general body of creditors, if done by the debtor subsequent to the period fixed by the tribunal as being that of the cessation of his payments, or within ten days previously thereto, viz., all conveyances of his realty or personalty without valuable consideration; all payments either in cash or by conveyance, sale, transfer, set-off or otherwise in respect of debts not accrued due; and as regards debts due, all payments made otherwise than in cash or commercial bills; all hypothèques judiciaires ou hypothèques conventionnelles, and all pledges of the realty or personalty of the debtor in respect of debts previously contracted.

Art. 447. — All other payments made by the debtor in respect of debts accrued due, and all other document à titre onéreux executed by him after the cessation of his payments and before the adjudication

of bankruptcy, can be annulled, if they have taken place with a knowledge, on the part of those who have received of the debtor, of the cessation of his payments.

Art. 448.—Mortgages and privilège validly acquired can be registered up to the date of the adjudication of bankruptcy. Nevertheless all such inscriptions entered after the period of the cessation of payments, or within ten days previously, can be declared void if more than 15 days have elapsed between the execution of the deed of mortgage or privilege and the registration thereof. The time is enlarged by one day for each five myriamètres of distance between the place where the right of mortgage or pledge became acquired and the place of registration.

Art. 449.—In cases where bills of exchange have been paid by the bankrupt after the period fixed as that of the cessation of payments, and before the adjudication of bankruptcy, an action for reimbursement can only be brought against the party for whose account the bill of exchange was drawn.

In the case of a promissory note the action can be brought against the first indorser only. In either case proof that the party called upon to reimburse the amount of the bill was aware of the cessation of payment at the period of the creation of the bill must be made.

Art. 450.—The syndics have, as regards leases of lands used for the business or commerce of the bankrupt, including dependencies thereof serving as a dwelling-house of the bankrupt and his family, eight days, from the expiration of the time granted by Art. 492 of the Code of Commerce to creditors domiciled in France, to prove their debts, during which they can give notice to the landlord of their intention to continue the lease upon the condition of fulfilling all the obligations of the lease: Such notice can be given only with the authorisation of the juge-commissaire, and after hearing the bankrupt. Until

the expiration of the above eight days, all means of execution upon the personal effects relating to the carrying on of the business of the bankrupt, and all proceedings to cancel the lease are suspended, without prejudice to any provisional measures and to the right that the landlord may possess to re-enter into possession of the premises leased. In the latter case the suspension of the means of execution set out in the present Article will take effect as of right. The lessor must, within 15 days following the notice by the syndics, apprise them of his claim to cancel the lease. In default thereof he shall be taken to have forfeited the right to cancelment which he previously possessed.

CHAPTER II.

OF THE APPOINTMENT OF THE JUGE-COMMISSAIRE.

Art. 451.—By the judgment declaring the bankruptcy, the Tribunal of Commerce appoints one of its members to the office of juge-commissaire.

Art. 452.—The duties of the juge-commissaire consists specially in accelerating and superintending the operations and management of the bankruptcy. He makes a report to the Tribunal of Commerce of all litigation arising from the bankruptcy and coming under the jurisdiction of such tribunal.

Art. 453.—Orders made by the juge-commissaire can only be appealed from in the cases provided by law. Such appeals lie to the Tribunal of Commerce.

Art. 454.—The Tribunal of Commerce can at any time replace the juge-commissaire of a bankruptcy by another of its members.

CHAPTER III.

OF THE AFFIXING OF THE SEALS, AND OF THE FIRST MEASURES TO BE ADOPTED AS REGARDS THE PERSON OF THE BANKRUPT.

Art. 455.—By the judgment declaring the bankruptcy, the tribunal orders seals to be placed upon the bankrupt's effects, and his person to be lodged in the house of detention for debtors, or orders him into the custody of a police officer. Nevertheless, if the juge-commissaire considers that an inventory of the assets of the bankrupt can be made in one day, the seals need not be affixed thereto, and the inventory shall be drawn up forthwith.

Art. 456.—If the bankrupt has complied with the provisions of Arts. 438 and 439, and is not at the time of the adjudication in prison for debt or otherwise, the tribunal can dispense him from detention as above. The clause in the judgment so dispensing a bankrupt from arrest can, however, according to the circumstances, be revoked subsequently by the tribunal, even of its own accord.

Art. 457.—The greffier of the Tribunal of Commerce must forthwith give notice to the justice of peace of the judgment ordering the seals to be affixed. The justice of peace can, however, before the judgment, affix the seals, either of his own accord or at the request of one or several creditors, but only in the event of the disappearance of the debtor, or of the misappropriation by him of a part or of the whole of the assets.

Art. 458.—The seals shall be placed upon the warehouses, counters, cases, portfolios, books, papers, furniture and effects of the bankrupt. In the case of the bankruptcy of a firm en nom collectif, the seals shall be placed, not only in the principal place of business of the partnership, but also at the separate domiciles of the members

thereof respectively. In all cases the justice of peace will give notice without delay to the President of the Tribunal of Commerce of the seals having been affixed as aforesaid.

Art. 459. — The greffier of the Tribunal of Commerce shall, within 24 hours, forward an extract of the judgment declaring the bankruptcy, setting out the principal provisions therein to the Procureur de la République of the district.

Art. 460. — The provisions ordering the detention of the person of the bankrupt in a debtor's prison, or the custody of his person, shall be carried into execution either by the ministère public or by the syndics of the bankruptcy.

Art. 461. — When the assets of the bankrupt are insufficient to defray immediately the expenses of the judgment declaring the bankruptcy, the publication and advertisements of the judgment in the newspapers, the placing of the seals, and the arrest and incarceration of the bankrupt, the amount necessary shall, by order of the juge-commissaire, be advanced by the public Treasury, to be repaid as a first charge out of the first assets received, but without prejudice to the priority of the landlord of the bankrupt.

CHAPTER IV.

OF THE APPOINTMENT AND DISMISSAL OF PROVISIONAL TRUSTEES (Syndics Provisoires).

Art. 462. — The Tribunal of Commerce, by the judgment declaring the bankruptcy, will appoint one or more provisional syndics. The juge-commissaire will immediately convene a meeting of the presumed creditors, to be held within 15 days from the adjudication. He will consult the creditors present at such meeting as to the list of the presumed creditors (*créanciers présumés*), and as to

the appointment of new syndics. A report shall be drawn up of their observations and wishes, to be presented to the tribunal. Upon the presentation of such report and list of creditors, and upon receipt of the report of the juge-commissaire, the tribunal will either appoint new syndics or retain the first in their office. The syndics thus nominated are definitive; they can, however, be replaced by the Tribunal of Commerce in the cases and according to the forms which may be determined. The number of syndics can be increased to three at any time; they need not necessarily be creditors, and they can receive, whatever may be their profession, a remuneration, after having rendered an account of their duties, to be fixed by the tribunal, pursuant to the report of the juge-commissaire.

Art. 463.—No relation of the bankrupt, up to and including the fourth degree, can fulfil the office of syndic.

Art. 464.—In the event of it being necessary to add or replace one or more syndics, application shall be made by the juge-commissaire to the Tribunal of Commerce, who will proceed to the nominations according to the forms provided by Art. 462.

Art. 465.—If several syndics have been appointed, they can only act collectively; nevertheless the juge-commissaire can grant special authority to one or more of them to act separately in regard to certain matters of administration or management. In the latter case the syndics so authorised are solely responsible in relation to such acts.

Art. 466.—In the case of complaints respecting the acts of the syndic or syndics, the juge-commissaire will adjudicate upon the same within three days from notice thereof, but an appeal from his decision lies to the Tribunal of Commerce. The decisions of the juge-commissaire must be provisionally executed, notwithstanding appeal.

Art. 467.—The juge-commissaire can, either at the request of the bankrupt, or of the creditors,

or of his own accord, propose the dismissal of one or more of the syndics. If the juge-commissaire does not give attention within eight days to petitions presented to him, the same can be addressed to the tribunal. The tribunal, sitting in chambers, will receive the report of the juge-commissaire and the explanation of the syndics, and will decide forthwith as to the revocation.

CHAPTER V.

OF THE DUTIES OF THE SYNDICS.

SECTION I.

GENERAL PROVISIONS.

Art. 468.—If the seals have not been affixed prior to the appointment of the syndics, they will apply to the juge-de-paix to proceed to affix them.

Art. 469.—The juge-commissaire can, at the request of the syndics, dispense them from affixing the seals, or authorise them to except the following effects:—I. Clothing, stuffs, furniture and effects necessary for the use of the debtor and his family, the delivery of which may be ordered by the juge-commissaire upon the statement submitted to him by the syndics. II. Perishable articles or effects liable to immediate depreciation. III. Effects used in carrying on the business of the bankrupt when such business cannot be interrupted without prejudice to the creditors. Inventories of the objects comprised in the two preceding paragraphs shall be forthwith drawn up and appraised by the syndics in the presence of the juge-de-paix, who will sign their report.

Art. 470.—The sale of perishable effects, and objects subject to imminent depreciation, or costly to retain, and of the good-will of the business, will be carried out by the syndics upon authority being granted by the juge-commissaire.

Art. 471.—The books shall be withdrawn from the seals and handed by the juge-de-paix to the syndics after being settled and adjusted by him; he will mention summarily in his report the state in which he finds them. Negotiable instruments shortly accruing due, or for acceptance, or in respect of which conservative measures or proceedings are necessary, shall also be withdrawn from the seals by the juge-de-paix, and described and handed to the syndics in order to be collected. A schedule thereof shall be transmitted to the juge-commissaire. Other debts due to the bankrupt shall be recovered by the syndics, and receipts shall be given by them upon payment. Letters addressed to the bankrupt shall be taken possession of and opened by the syndics; the bankrupt can, however, if present, assist at the opening thereof.

Art. 472.—The juge-commissaire can propose the liberation of the bankrupt, with a provisional protection for his person, if the state of his affairs appear satisfactory. If the tribunal grant the protection, it can order the bankrupt to furnish security for his reappearance under a penalty of an amount to be fixed by the tribunal, and to be distributed amongst the creditors.

Art. 473.—Should the juge-commissaire neglect to propose the liberation of the bankrupt, the latter can petition the Tribunal of Commerce, who will decide thereon at a public sitting, after having heard the juge-commissaire.

Art. 474.—The bankrupt can receive from the assets, for the support of himself and his family, an allowance, to be fixed by the juge-commissaire, upon the proposition of the syndics, with right of appeal to the tribunal in case of dispute.

Art. 475.—The syndics will cause the bankrupt to attend before them to close and balance the books in his presence. If he fails to attend he shall be summoned to appear within 48 hours. He may appear by deputy, whether he possesses a *sauf*

conduit or not, upon furnishing satisfactory reasons to the juge-commissaire.

Art. 476.—In the event of the bankrupt not having filed his balance-sheet, the syndics shall immediately draw up the same with the aid of the books and papers of the bankrupt and of the information they can procure, and they will forthwith deposit it at the greffe of the Tribunal of Commerce.

Art. 477.—The juge-commissaire is authorised to examine the bankrupt, his clerks and servants, and all other persons, in relation to the preparation of the balance-sheet, and to the causes and circumstances concerning the bankruptcy.

Art. 478.—When the bankruptcy of a trader has been declared after his decease, or when the bankrupt dies after the declaration of bankruptcy, his widow, his children, and his heirs can present themselves, or be represented in substitution for the deceased, in the preparation of the balance-sheet, as well as in all other matters relating to the bankruptcy.

SECTION II.

OF THE REMOVAL OF THE SEALS AND OF THE INVENTORY.

Art. 479.—Within three days after the declaration of bankruptcy, the syndic shall cause the seals to be removed, and shall proceed to draw up an inventory of the assets of the bankrupt, who shall be present or duly summoned.

Art. 480.—The inventory shall be inscribed in duplicate by the syndics as the seals are removed, and in presence of the juge-de-paix, who will sign the inventory at each attendance. One copy shall be filed at the greffe of the Tribunal of Commerce within 48 hours; the other remains in the possession of the syndics. The syndics may employ assistants for the preparation of the inventory and valuation of the effects. Objects which were not placed under

seal pursuant to Art. 469, and effects of which an inventory or valuation has previously been made, shall be verified and checked.

Art. 481.—In the case of a declaration of bankruptcy after decease, when no inventory has been drawn up previously to such adjudication, or in the case of the death of the bankrupt before the commencement of the inventory, the same shall be prepared forthwith in the form prescribed in the preceding Article, and in the presence of the heirs or other parties duly convened.

Art. 482.—In all bankruptcies the syndics must, within a fortnight of their appointment, furnish the juge-commissaire with a summary statement of the apparent position of the estate, and setting out the principal reasons and circumstances which caused the bankruptcy. The juge-commissaire will immediately transmit such statement, with his own observations thereon, to the Procureur de la République. Should he not have received the statement within the prescribed period, he must apprise the Procureur de la République of the delay and the reasons thereof.

Art. 483.—The Procureur de la République, or his substitutes, may attend at the domicile of the bankrupt, and at the taking of the inventory. They may at any period demand communication of all the documents, books, and papers relating to the bankruptcy.

SECTION III.

OF THE SALE OF THE GOODS AND PERSONALTY, AND OF THE RECOVERY OF ASSETS.

Art. 484.—When the inventory is completed, the goods, moneys, securities, books, papers, furniture and effects of the debtor, shall be taken possession of by the syndics, and mention thereof shall be inscribed at the foot of the inventory by the syndics, who will acknowledge the same.

Art. 485.—The syndics will continue to collect debts owing to the estate, under the supervision of the juge-commissaire.

Art. 486.—The juge-commissaire can, after hearing the bankrupt, or after having duly summoned him to attend, authorise the syndics to proceed to sell the goods and personalty. He will decide whether the sale shall take place by private treaty or public auction, or be conducted by brokers or other public officials appointed for the purpose. The syndics will select the member whose services are to be employed from the body of public officials chosen by the juge-commissaire.

Art. 487.—The syndics can, with the authority of the juge-commissaire, and upon notice to the bankrupt, compromise all matters in dispute affecting the creditors, even actions relating to real property. If the subject of the compromise be of uncertain value, or exceed three hundred francs, the compromise shall not be binding unless confirmed as follows: by the Tribunal of Commerce in respect of compromises relating to personalty, and by the Tribunal Civil for those relating to realty. The bankrupt shall be summoned to such confirmation, and shall in every case have the right to oppose. His opposition will suffice to prevent such compromise if the same relate to real property.

Art. 488.—If the bankrupt has been dispensed from arrest, or has obtained a *sauf conduit*, the syndics may employ him to facilitate their duties; the juge-commissaire will determine the remuneration for such assistance.

Art. 489.—The moneys arising from the sales and recovery of assets shall be immediately paid into the Caisse des Dépôts et Consignations, after deduction of the amount fixed by the juge-commissaire to meet the expenses and disbursements; within three days of moneys being received, proof of the same having been paid into the Caisse des Dépôts et Consignations must be furnished to the juge-commissaire. In case of delay, the syndics must pay interest upon the

sums they neglect to deposit as above. The assets paid in to the Caisse by the syndics and by third parties, to the credit of the estate, cannot be drawn out unless by an order of the juge-commissaire. If attachments are served upon funds so deposited, the syndics must previously have them annulled. The juge-commissaire can order that payment be made by the Caisse des Dépôts et Consignations to the creditors of the bankruptcy direct, upon a statement drawn up by the syndics and approved by himself.

SECTION IV.

OF PRECAUTIONARY MEASURES.

Art. 490.—The syndics, in entering upon their functions, must fulfil all acts necessary for the preservation of the rights of the bankrupt as regards his debtors. They must register all mortgages upon realty of the debtors of the bankrupt, if he have neglected such formality; the inscription shall be made in the name of the body of creditors by the syndics, who must join to the schedules a certificate of their appointment. They must also “prendre inscription,” in the name of the creditors, on all the real property of the bankrupt the existence of which they can ascertain. The inscription will be received upon production of a simple schedule, stating that the bankruptcy has been declared, and mentioning the date of the judgment pursuant to which they were appointed.

SECTION V.

OF PROOF OF DEBTS.

Art. 491.—The creditors can, from and after the date of the judgment declaring the bankruptcy, deposit with the greffier the schedules and documents relating to their claims. The greffier must give receipts for, and keep an account of the

same. He will not be responsible for such documents for a longer period than five years from the date of the opening of the report admitting the proofs.

Art. 492.—Creditors who, at the period of the confirmation or replacement of the syndics, pursuant to the third paragraph of Art. 462, shall not have deposited the documents proving their claims, will immediately receive notices by advertisements in the newspapers, and by letters from the greffier, to present themselves in person or by deputy within 20 days from the date of the said notices before the syndics of the bankruptcy, and leave with them their documents, accompanied by a schedule mentioning the amounts claimed by them, unless they prefer to make such deposit at the greffe of the Tribunal of Commerce. Receipts shall be delivered for all deposits. As regards creditors residing in France beyond the place in which the tribunal directing the bankruptcy is situate, the period for proving their debts as above shall be increased in the ratio of one day for each five myriamètres of distance between the place in which the tribunal is situate and the domicile of the creditor. As regards creditors domiciled beyond French European territory, the period shall be increased pursuant to the rules contained in Art. 73 of the Code of Civil Procedure.*

Art. 493.—The examination of the proofs will commence within three days after the expiration of the periods mentioned in the first and second paragraphs of Art. 492, and will be continued without interruption. The examination will be made at the place and upon the day and at the hour fixed by the juge-commissaire. The notice to creditors prescribed by the preceding Article will set out the above particulars. Nevertheless, the creditors shall be further summoned for the same purpose by letters from the greffier and by

* Art. 73, see p. 298.

advertisements in the newspapers. The proofs of the syndics themselves shall be examined by the juge-commissaire, the others shall be investigated by the syndics in the presence of the juge-commissaire and the creditor or his agent. The juge-commissaire will draw up a report of the proceedings.

Art. 494.—Every creditor admitted or inscribed upon the balance-sheet can assist at the examination of claims, and criticise proofs admitted and under investigation. The bankrupt has the same right.

Art. 495.—The report of the examination must mention the domicile of the creditors and of their agents. It must also contain a summary description of the documents, and indicate additions, erasures and interlineations, and state whether the claim is admitted or contested.

Art. 496.—In every case the juge-commissaire may, even of his own accord, order the production of the books of the creditor, or demand, by virtue of a commission, that an extract be taken therefrom, and forwarded by the officials of the place in which such books are situate.

Art. 497.—If the claim be admitted, the syndics will indorse the following memorandum upon each of the titres, viz.:—Admitted to prove in the bankruptcy of for the sum of the (date) The juge-commissaire will countersign the declaration. Each creditor, within eight days at latest after admission of his proof, is obliged to lodge a statement with the juge-commissaire, affirming that his claim is genuine and *bonâ fide*.

Art. 498.—If the claim is contested, the juge-commissaire can refer it, without a citation being necessary, to the Tribunal of Commerce forthwith, and judgment will be given upon his report. The Tribunal can order that an inquiry be held before the juge-commissaire upon the facts, and that persons able to furnish information be summoned to attend before him.

Art. 499.—When a contest as to the admission of a proof is brought before the Tribunal of Commerce, the tribunal (if the cause is not in a state for final judgment to be delivered thereon before the expiration of the periods fixed as regards persons domiciled in France, by Arts. 492 and 497) can order, according to the circumstances, that the calling of the meeting be adjourned, to decide upon the concordat of the bankrupt. If the tribunal orders that the claim shall be postponed, it can decide provisionally that the creditor whose proof is contested shall be admitted to vote in respect of an amount to be determined by such decision.

Art. 500.—When the contest is referred to a Tribunal Civil, the Tribunal of Commerce will decide if the claim shall be postponed or decided upon; in the latter case the Tribunal Civil will decide summarily upon the petition of the syndics, notice being given to the creditor, and without further procedure, whether the claim shall be provisionally admitted, and for what amount. In the event of a claim being the object of criminal proceedings, the Tribunal of Commerce can, nevertheless, order its postponement; if it order it, however, to be passed over, it cannot allow its provisional admission, and the creditor in question cannot take part in the operations of the bankruptcy until a competent tribunal has adjudicated thereon.

Art. 501.—A creditor whose privilege or mortgage only is contested can vote at meetings of the bankruptcy in the same manner as an ordinary creditor.

Art. 502.—At the expiration of the periods prescribed by Arts. 492 and 497, relating to persons domiciled in France, the concordat and all the other proceedings relating to the bankruptcy shall be carried through irrespective of them, with the exception contained in Arts. 567 and 568, in favour of creditors domiciled out of the European territory of France.

Art. 503.—In default of appearance and affirma-

tion within the periods applying to the same respectively, the defaulters, whether known or unknown, will not be comprised in the future distribution of dividends; but they may appear to oppose at any time up to the distribution; the costs of such appearance are always to be borne by themselves. Their opposition cannot suspend the payment of dividends already ordered to be distributed by the juge-commissaire; but if further dividends are paid before their claims have been adjudicated upon, they shall be provisionally comprised in such distribution in respect of an amount to be fixed by the Court, and which will be provisionally retained until judgment be delivered upon their opposition. If they are ultimately admitted as creditors, they can claim nothing in respect of dividends already ordered to be paid by the juge-commissaire, but they will have the right to receive their entire proportionate dividends from the commencement, out of the first payment from the assets then next to be distributed.

CHAPTER VI.

OF THE DISCHARGE OF THE BANKRUPT (Concordat) AND OF THE STATE OF "Union."

SECTION I.

OF THE CONVOCAATION AND OF THE
MEETING OF CREDITORS.

Art. 504.—Within three days after the time prescribed for the affirmations, the juge-commissaire will, through the greffier, call a meeting of the creditors whose proofs have been verified and affirmed or admitted provisionally, to deliberate upon the discharge of the bankrupt. The advertisement in the newspapers and letters of convocation will mention the object of the meeting.

Art. 505.—The meeting will be held under the

presidence of the juge-commissaire, at the place, day, and hour appointed by him; creditors having proved and affirmed, and being provisionally admitted, may attend in person or by proxy. The bankrupt shall be summoned to the meeting, and must attend in person if dispensed from arrest, or if possessing a *sauf-conduit*. He cannot attend by proxy, unless upon furnishing a satisfactory excuse, to be approved by the juge-commissaire.

Art. 506.—The syndics will present a report to the meeting upon the position of the bankruptcy, the formalities which have been complied with, and the operations which have taken place; the bankrupt shall also be heard. The report of the syndics shall be handed to the juge-commissaire, duly signed by them, and he will draw up a report of the proceedings and decisions passed at the meeting.

SECTION II.

OF THE DISCHARGE OF THE BANKRUPT (Concordat).

§ 1.—OF THE FORMATION OF THE CONCORDAT.

Art. 507.—No composition can be agreed upon between the creditors and the bankrupt until after compliance with the formalities above described. The agreement for composition can be passed by a majority of the creditors representing three-fourths of the totality of the debts proved and affirmed, or provisionally admitted, pursuant to sec. v. of chap. v. In default the composition is void.

Art. 508.—Creditors by way of mortgage, registered or dispensed from registration, or privileged and secured creditors, cannot vote in relation to the concordat for such debts. They cannot vote unless they give up their securities. Should they nevertheless vote, they thereby forfeit such securities.

Art. 509.—The concordat must be signed at the meeting, or it will be void. If only a majority in number consent, or a majority of three-fourths in amount, the meeting shall be peremptorily adjourned for eight days. In this case the resolutions passed and the adhesions given at the prior meeting are of no effect.

Art. 510.—If the bankrupt has been condemned as a fraudulent bankrupt, no concordat can be passed. When proceedings in relation to fraudulent bankruptcy have been commenced, a meeting of the creditors must be called to decide as to a concordat being granted in case of acquittal. The meeting may, however, postpone any resolution until the issue of the above proceedings. Such postponement must, however, be agreed to by the majority in number and amount provided by Art. 507. If at the expiration of the period fixed for the postponement it becomes necessary to decide as to the concordat, the rules prescribed in the preceding Article will be applicable to such further meetings.

Art. 511. — If the bankrupt has been sentenced as a banqueroutier simple, the concordat can be formed. Nevertheless, in the event of proceedings being commenced, the creditors can postpone their decision until the issue of the proceedings be known, upon compliance with the preceding Article.

Art. 512.—All the creditors who have been entitled to vote in respect of the concordat, or whose claims shall only have been admitted after the voting of the concordat, can enter opposition against it. Such opposition must be drawn up and served upon the syndics and upon the bankrupt within eight days following the concordat, or it will be void. The opposition must include a writ calling upon them to appear at the first audience of the Tribunal of Commerce. If one syndic only has been appointed, and he opposes the concordat, he must request that a new syndic be named, as regards whom he is required to comply with the forms prescribed in the present Article. If the judgment or opposition is dependent

upon the decision of other questions relating to the matter, and as regards the jurisdiction of the Tribunal of Commerce, the said tribunal will postpone giving judgment until such questions be decided. It will fix a short period within which the opposing creditor must bring the questions before competent judges, and he must prove that he has used all reasonable diligence in relation thereto.

Art. 513. — The Tribunal of Commerce can be applied to to grant an homologation of the concordat upon the petition of any of the parties. The tribunal cannot render its decision before the expiration of eight days fixed by the preceding Article. If, during this interval, oppositions have been entered, the tribunal will adjudicate upon such oppositions and upon the homologation by the same judgment. If the opposition is admitted, the concordat will be pronounced void as regards all parties interested.

Art. 514. — In all cases, before deciding upon the homologation, the juge-commissaire must present a report to the tribunal upon the characteristics of the bankruptcy and upon the admissibility of the concordat.

Art. 515. — In the event of non-compliance with the above rules, or when reasons exist, either in the public interest or in the interest of the creditors, of a nature to render the concordat inexpedient, the tribunal can refuse to confirm it.

§ 2.—OF THE EFFECTS OF THE CONCORDAT.

Art. 515. — The confirmation or homologation of the concordat renders it binding upon all the creditors, whether inscribed upon the list or not, and whether they have or have not proved. It is even binding upon creditors domiciled out of France, and upon those who, pursuant to Arts. 499 and 500, have been provisionally admitted to vote, whatever their claims may be ultimately fixed at.

Art. 517. — The confirmation enables each creditor to preserve his mortgage upon the realty of the

debtor, the same being registered pursuant to the 3rd paragraph of Art. 490. To this effect, the syndics will have the judgment of confirmation entered at the mortgage registration office, unless it be otherwise decided by the concordat.

Art. 518.—No action to have the concordat declared void can be brought after the homologation thereof, unless upon the ground of fraud discovered after such confirmation, and appearing either from a dissimulation of the assets or from an exaggeration of the liabilities.

Art. 519.—The functions of the syndics cease as soon as the judgment of homologation has been rendered. They must, thereupon, render their accounts to the bankrupt in the presence of the juge-commissaire. The account is then examined and settled. They must also return to the bankrupt all his books, papers and effects, and the bankrupt must give a receipt for the same. A report thereof will be drawn up by the juge-commissaire, and thereupon their functions will cease. In case of dispute, the Tribunal of Commerce will adjudicate thereon.

§ 3.—OF THE CANCELLATION OR REVOCATION OF THE CONCORDAT.

Art. 520.—The cancelment of the concordat, either upon the ground of fraud, or consequent upon a conviction for fraudulent bankruptcy pronounced since the homologation, liberates the sureties by right of law. In the event of non-execution by the bankrupt of the conditions of the concordat, the cancellation of such arrangement can be demanded against him before the Tribunal of Commerce in the presence of the sureties, should any exist, or upon their being duly summoned. The cancellation of the concordat will not liberate sureties who have bound themselves to guarantee its entire or partial fulfillment.

Art. 521.—When, after the ratification of the concordat by the tribunal, the bankrupt is prosecuted for fraudulent bankruptcy and arrested, the

Tribunal of Commerce can prescribe what conservative measures appear expedient. These measures will cease upon the day of the declaration that the prosecution can be abandoned, and the order liberating the prisoner, or the judgment of acquittal.

Art. 522.—Upon inspection of the judgment of condemnation for fraudulent bankruptcy, or upon the judgment which pronounces either the annulment or cancellation of the concordat, the Tribunal of Commerce will appoint a juge-commissaire, and one or several syndics. These syndics can affix the seals. They will proceed without delay, with the assistance of the juge-de-paix, upon the former balance-sheet, to verify the securities, assets, shares and papers, and will proceed, if necessary, to draw up a supplementary inventory. They will also draw up a supplementary balance-sheet. They will publish in the necessary newspapers, with an extract of the judgment appointing them, an invitation to new creditors, if any exist, to prove within twenty days, and to deposit their documents for examination. This invitation is also made by letters sent by the greffier, pursuant to Arts. 492 and 493.

Art. 523.—The verification of the proofs shall be proceeded with without delay, pursuant to the preceding Article. Claims already admitted and proved need not be verified *de novo*, without prejudice, nevertheless, to the rejection or reduction of those which may have been paid since, in part or wholly.

Art. 524.—These operations being concluded, if no new concordat is brought about, the creditors will be summoned to give their opinion upon the maintenance in office or dismissal of the syndics. No distribution of dividend shall be made until the expiration, as regards new creditors, of the periods accorded to persons domiciled in France, by Arts. 492 and 497.

Art. 525.—Deeds executed by the bankrupt subsequent to the judgement d'homologation, and previously to the cancellation of the concordat, cannot

be annulled except in case of fraud, as regards the rights of the creditors.

Art. 526.—Creditors, previous to the concordat, will enter entirely into their rights as regards the bankrupt alone, but they can only be admitted to prove in the general body of creditors in the following proportions, viz:—

If they have received no portion of dividend upon the totality of their claims;

If they have received a part of dividend relating to the portion of their prior claims, corresponding to the portion of the dividend promised but not yet paid.

The provisions of the present Article will be applicable in the case where a second bankruptcy has been opened without the concordat having been previously annulled.

SECTION III.

OF THE CLOSING OF THE BANKRUPTCY IN CASE OF INSUFFICIENCY OF THE ASSETS.

Art. 527.—If, at any period before the homologation of the concordat, or the formation of the union, the course of the operations of the bankruptcy is arrested through insufficiency of assets, the Tribunal of Commerce can, upon the report of the juge-commissaire, pronounce, even of its own accord, that the operations of the bankruptcy be closed. This judgment will confer upon each creditor the exercise of his individual rights as against the property and the person of the bankrupt. During one month from the date thereof the execution of this judgment shall be suspended.

Art. 528.—The bankrupt, or any other interested party, can at any period have such judgment reversed by the tribunal, upon proving that funds exist to meet the expenses of the bankruptcy, or by

paying into the hands of the trustees a sufficient sum to provide for the same. In all cases the expenses of proceedings instituted pursuant to the preceding Article must have been previously paid or discharged.

SECTION IV.

THE "UNION" OF CREDITORS.

Art. 529. — If no concordat is agreed to, the creditors are by right of law in a state of union. The juge-commissaire will consult them immediately, both upon acts of management and as to the utility of maintaining or replacing the syndics. Privileged or mortgage creditors, or creditors holding security, can be admitted to such meeting. A report will be drawn up of the observations of the creditors, and upon inspection of this document the Tribunal of Commerce will decide, as is provided in Art. 462. The syndics who are not maintained in their office must render their accounts to the new syndics in the presence of the juge-commissaire, the bankrupt being duly summoned.

Art. 530. — The creditors will be consulted as to the question of assistance being granted to the bankrupt from the assets. When the majority of the creditors present have consented thereto, a sum of money can be granted to the bankrupt by way of assistance, out of the assets of the bankruptcy. The syndics will propose the amount, which shall be decided by the juge-commissaire; the syndics alone can appeal from his decision to the Tribunal of Commerce.

Art. 531. — When a mercantile firm is in bankruptcy, the creditors can consent to the concordat in favour of one or several of the partners only. In this case the assets will be administered under the régime of the union. The property belonging personally to those as regards whom the concordat has

been consented to will be excluded, and the special agreement executed with them can only contain an engagement to pay a dividend out of assets foreign to the general assets. A partner who has obtained a special concordat will be discharged from all liability, joint or several.

Art. 532. — The syndics represent the body of creditors, and are charged with the winding-up of the estate. The creditors, nevertheless, can give them authority to continue the working of the business. The resolution which confers upon them this right will determine its duration and extent, and will fix the amount which they may retain in their hands to provide for the expenses thereof. This resolution must be passed in the presence of the juge-commissaire, and by a majority of three-fourths of the creditors in number and value.

Opposition can be entered against such resolution by the bankrupt, or by dissenting creditors, but such opposition shall not suspend the execution thereof.

Art. 533.—When the operations of the syndics require engagements to be entered into which exceed the assets of the union, the creditors who authorise such operations are personally responsible beyond their share in the assets, but in each case within the limits of the authority which they gave. They must pay in proportion to their claims.

Art. 534. — The syndics are charged to proceed to the sale of the real property, goods and effects of the bankrupt, and the winding-up of his assets and liabilities, the whole under the superintendence of the juge-commissaire, and without it being necessary to summon the bankrupt.

Art. 535.—The syndics can, by conforming to the rules prescribed by Art. 487, enter into compromises in relation to cases of claims belonging to the bankrupt, notwithstanding any opposition on his part.

Art. 536. — The creditors in a state of union must be called together at least once within the

first year, and if necessary during the following years, by the juge-commissaire. In these meetings the syndics must render an account of their management. They will be continued in the exercise of their functions according to the forms prescribed by Arts. 462 and 529.

Art. 537. — When the liquidation of the bankruptcy shall be terminated, the creditors must be called together by the juge-commissaire. At this last meeting the syndics must hand in their accounts. The bankrupt must be present or duly summoned. The creditors will give their opinion upon the excusabilité sent in by the bankrupt, if any. A report shall be drawn up, upon which each of the creditors can enter his observations. After the closing of this meeting, the union shall be dissolved by right of law.

Art. 538. — The juge-commissaire will present to the tribunal the resolution of the creditors relating to the excusabilité of the bankrupt, and a report upon the characteristics and circumstances of the bankruptcy. The tribunal will decide whether the bankrupt is excusable or not.

Art. 539. — If the bankrupt is not declared to be excusable, the creditors will enter into the exercise of their individual actions against him, both as to person and as to property. If he is declared excusable, he is free from arrest as regards the creditors of his bankruptcy, and cannot be sued by them except as regards his property, and under circumstances provided in certain particular laws. [The above Article is of no further interest in consequence of the abolition of imprisonment for debt.]

Art. 540. — The following cannot be declared excusable, viz. :—

Fraudulent bankrupts, stellionataires, persons condemned for theft, swindling, and abuse of confidence, and public Government accountants.

Art. 541. — No commercial debtor can be permitted to demand admission to the benefit of cession

de biens; nevertheless a concordat by total or partial abandonment of the assets of the bankrupt can be formed according to the regulations prescribed by sec. ii. of the present chapter. This concordat produces the same effects as other concordats, and is annulled and cancelled in the same manner. The liquidation of the abandoned assets is carried out pursuant to paragraphs 2, 3, and 4 of Art. 529, and to Arts. 532, 533, 534, 535, and 536, and to paragraphs 1 and 2 of Art. 537. The concordat by abandonment is similar to the union as regards the payment of registration duties.

CHAPTER VII.

OF THE VARIOUS DESCRIPTIONS OF CREDITORS, AND OF THEIR RIGHTS IN CASE OF BANKRUPTCY,

SECTION I.

OF JOINT OBLIGATIONS AND SECURITY.

Art. 542.—A creditor holding engagements subscribed, indorsed, or guaranteed jointly and severally by the bankrupt and other parties in bankruptcy, may prove against all the estates for the whole of his claim until he has received full payment.

Art. 543.—No right of action by reason of dividends paid is allowed in the bankruptcies of parties jointly and severally bound towards the same creditor having proved against all the estates, one against the other, unless in the case where the sum total of the dividends arising from these bankruptcies would exceed the total amount of the claim of the creditor in principal and expenses, in which case such excess shall be returned to the assets of such bankruptcy, according to the order in which the rights of action of indemnity can be enforced.

Art. 544.—If a creditor holding a joint and several

undertaking of the bankrupt and other parties, has received, before the bankruptcy, a payment on account of his claims, he can only prove against the estate upon giving credit for the amount so received, but he will preserve his rights against the sureties for the balance. A surety having paid part of a claim for which he has become bound, can prove for that amount against the estate.

Art. 545.—The creditors preserve their rights against the sureties of the bankrupt for the whole of their claims, notwithstanding the discharge of the bankrupt.

SECTION II.

OF SECURED AND PRIVILEGED CREDITORS.

Art. 546.—Creditors of the bankrupt legally holding security shall be described as such in the list of creditors.

Art. 547.—The syndics can at any time, with the permission of the juge-commissaire, take possession, for the benefit of the estate, of the securities held by creditors upon payment of their claims.

Art. 548.—Should the security not be returned by the syndics, and be sold by the creditor for a sum exceeding the amount of his claim, the surplus shall be payable to the syndics; if the price realised be less than his claim, the creditor can prove against the estate for the deficiency in the same manner as an ordinary creditor.

Art. 549.—The wages of workmen employed directly by the bankrupt, due in respect of the month previous to the declaration of bankruptcy, shall rank as privileged claims in the order prescribed by Art. 2,101 of the Code Civil for the salaries of hired persons. The salaries of clerks for the period of six months preceding the declaration of bankruptcy are admitted upon the same basis.

Art. 550.—Art. 2,102 of the Code Civil is thus modified as regards bankruptcies. If the lease is cancelled, the landlord of real property used for the trade or business of the bankrupt will be reckoned a privileged creditor in respect of the rent due for the last two years prior to the judgment declaring the bankruptcy, and also as regards the current year, and in respect of all the accessories relating to the carrying out of the lease, and for any damages that may be allowed him by the Court arising from the cancellation of the lease. In case of non-cancellation, the lessor, when once he has been paid all rent hitherto due, is not entitled to be paid rent running or to become due at a future time if the securities which were furnished at the time of the contract are maintained, or if those furnished since the bankruptcy are reckoned sufficient. In the event of a sale and removal of personal property situate upon the premises leased, the lessor can enforce his priority as in the case of cancellation above mentioned, and further for a year, to expire from the end of the current year, whether the lease be dated or not. The syndics can continue or transfer the lease for the remainder of the term upon condition of maintaining upon the premises, by themselves or by their transferees, sufficient security, and of executing, at the proper periods, all the obligations arising by law or from the agreement, and they must not employ the premises for other purposes than was originally stipulated. In the event of the lease containing a provision forbidding the lessee to transfer or underlet, the creditors have nevertheless the right to underlet the premises, but only for the term for which the landlord may have received the rent in advance, nor can they employ the premises for other purposes than originally stipulated. The privilege and right of reclamation, established by No. 4 of Art. 2,102 of the Code Civil in favour of the vendor of personalty, cannot be exercised against the bankruptcy.

Art. 551. — The syndics will furnish the juge-commissaire with a list of the creditors claiming to be privileged upon the personalty, and the juge-commissaire can order that such creditors be paid out of the first assets collected. In the event of the privilege being disputed, the tribune will adjudicate upon the question.

SECTION III.

OF THE RIGHTS OF MORTGAGE AND PRIVILEGED CREDITORS UPON THE REAL ESTATE.

Art. 552. — When the distribution of the proceeds of the real estate shall be made previously to that of the proceeds of the personal estate, or simultaneously therewith, the mortgage and privileged creditors whose demands are not satisfied out of the price of the real estate shall rank for what remains due to them rateably with the simple contract creditors, on the assets belonging to the general body, provided always, that their claims shall have been proved and admitted pursuant to the forms hereinbefore mentioned.

Art. 553. — If one or several distributions of the proceeds of the personalty precede the distribution of the proceeds of the real estate, the privileged or mortgage creditors whose claims are duly proved and admitted will participate in the dividends in proportion to their proofs, subject, however, should the case happen, to the deductions hereafter mentioned.

Art. 554. — After the sale of the real property and the settlement in order of the various mortgage and privileged creditors, those among them who are entitled to a preference for the whole amount of their demands on the real estate shall receive the same according to their classification, subject to a deduction of the sums which they may have already received from the simple contract fund. The sums

thus deducted shall not remain in the privileged fund, but return to the simple contract fund, for the benefit of which a separation shall be made.

Art. 555.—With respect to the mortgage creditors who shall be entitled only to a partial payment out of the proceeds of the real estate, the following rule shall be adopted:—Their rights in the simple contract fund shall be finally determined by the amount for which they shall remain creditors, after the adjustment of their respective quotas in the real estate; and the money which they shall have previously received beyond this proportion shall be retained out of their quota from the real estate, and shall return to the simple contract fund.

Art. 556.—The mortgage creditors whose claims are excluded from a participation in the real estate, on account of the fund being absorbed by creditors previously registered in order of rank, shall be considered as simple contract creditors, and subject, as such, to the effects of the concordat, and to all the other operations relating to the simple contract body of creditors.

SECTION IV.

OF THE RIGHTS OF MARRIED WOMEN.

Art. 557.—In the event of the bankruptcy of the husband, the wife whose real property has not been brought into the communauté, shall resume her exclusive right thereto, and to whatever other real property which shall devolve upon her, by inheritance, donation, or bequest.

Art. 558.—The wife shall also resume the exclusive right to the real property purchased by her and in her name, with moneys arising from the said inheritances and donations, provided that the clause of *emploi* be expressly contained in the purchase deeds, and that the origin of the money be proved by an *inventaire*, or other *acte authentique*.

Art. 559.—Under whatever régime the marriage contract may have been executed, except in the case provided for in the preceding Article, the legal presumption is that the property acquired by the wife of a bankrupt belongs to her husband, and has been purchased with his money, and should form part of the assets, saving the right of the wife to produce proof to the contrary.

Art. 560.—The wife can resume possession in kind of the personalty belonging to her pursuant to her marriage contract, or which may have devolved upon her by successive donation or bequest, and which shall not have entered into the communauté, in every case in which the identity thereof can be proved by an inventory or other authentic document. In default of such proof, all the personal property belonging to the husband and to the wife, upon whatever régime the marriage may have been contracted, devolves upon the creditors, with the exception of necessary wearing apparel and linen, which the syndics may, with the permission of the juge-commissaire, allow the bankrupt to retain.

Art. 561.—The right of recovery which may be claimed by the wife, pursuant to the provisions of Arts. 557 and 558, shall be subject to the charge of debts, liens and mortgages with which the property may be legally encumbered, either by her voluntary consent or by judicial award.

Art. 562.—In case the wife has paid debts for her husband, the legal presumption is that she has paid them with the money of her husband, and unless she prove the contrary, as is provided by Art. 559, she can have no right to a reimbursement.

Art. 563.—When the husband is a trader at the time of the celebration of the marriage, or if then without profession, he enter into trade within one year thereafter, the real property belonging to him at the time of the marriage, or which has devolved upon him by succession, donation or legacy, will alone be subject to the hypothèque légale of the wife for her security in the following cases, viz.:

1. In respect of moneys and personalty being her marriage portion, or coming to her since the marriage by succession, gift inter-vivos, or by will, the delivery or payment of which she can prove by any deed bearing a date certaine. 2. For the replacement of her property alienated during the marriage. 3. For the payment of debts contracted by her on behalf of her husband.

Art. 564. — The wife whose husband shall have been in trade when the marriage took place, or whose husband, not following any fixed profession at that time, became a trader within one year from the celebration thereof, can have no claim against the estate in respect of any benefits contained in the marriage contract, nor in the latter case can the creditors, on their part, avail themselves of the conditions stipulated therein by the wife for her husband's advantage.

CHAPTER VIII.

OF THE DIVIDENDS AMONG THE CREDITORS AND THE LIQUIDATION OF THE PER- SONALTY.

Art. 565.—The amount of the personal property of the bankrupt, deducting the costs and expenses of the administration of the estate, the allowance granted to the bankrupt or to his family, and the sums paid to the privileged creditors, shall be divided amongst all the creditors rateably according to their respective claims proved and confirmed.

Art. 566. — For this purpose the syndics shall deliver every month to the juge-commissaire a statement of the situation of the bankrupt's estate, and of the moneys paid into the Caisse des Dépôts et Consignations; the juge-commissaire shall order, if there be occasion, the payment of a dividend to the creditors, the rate of which shall be decided by him, and he will cause due notice thereof to be given to them.

Art. 567.—No distribution of dividends shall take place amongst the creditors domiciled in France until a proportion of assets shall be set aside corresponding to the claims of creditors domiciled out of France whose names are in the schedule. When such latter claims are inserted therein for an unascertained amount, the juge-commissaire can decide that the reserve shall be increased, with leave to the syndics to appeal from such decision to the Tribunal of Commerce.

Art. 568.—The proportion of assets above referred to shall be placed in reserve and deposited in the Caisse des Dépôts et Consignations until the expiration of the period prescribed by the last paragraph of Art. 492; it shall be distributed amongst the recognised creditors, if the creditors domiciled abroad have not proved their debts pursuant to the provisions of the present law. A similar reserve shall be made in respect of proofs which may not have been finally admitted.

Art. 569.—No payment shall be made by the syndics but on the production of the document attesting the debt. The syndics shall indorse on the document the payment made by them or ordered to be paid pursuant to Art. 489. Nevertheless, in the event of it being impossible to produce the document proving the debt, the juge-commissaire can order the dividend to be paid upon production of the admission of proof. In every case the creditor shall sign a receipt in the margin of the schedule of dividends.

Art. 570.—The union of creditors may be authorised by the Tribunal of Commerce, the bankrupt being duly summoned, to make any composition for the disposal and transfer of any debts or rights of action due or accrued to the bankrupt, the recovery of which has not been effected. In such case the syndics will execute and do all necessary acts and things for the carrying out of the arrangement. Any creditor can apply to the juge-commissaire to convene a meeting to discuss a composition.

CHAPTER IX.

OF THE SALE OF THE REAL PROPERTY OF THE BANKRUPT.

Art. 571.—Creditors not being mortgagees cannot proceed to sell the real property of the debtor after the date of the declaration of bankruptcy.

Art. 572.—If no proceedings for the sale of the real property have been commenced before the period of union, the syndics alone will be permitted to carry through the sale; they must proceed thereto within eight days of the union with the authorisation of the juge-commissaire, and comply with the forms prescribed for the sale of the property of minors.

Art. 573.—The surenchère, after the sale by public auction of the real property of the bankrupt, upon the application of the syndics, must be accompanied with the following conditions, viz.—The surenchère must be made within a fortnight. It must not be less than one-tenth of the highest bid at the adjudication. It must be made at the greffe of the Tribunal Civil, according to the forms prescribed in Arts. 710 and 711 of the Code of Civil Procedure. All persons may be admitted to make a surenchère; such last adjudication will be final, and cannot be followed by a further sale.

CHAPTER X.

OF REVENDEICATION.

Art. 574.—In case of bankruptcy the following can be reclaimed by the owners, viz.:—All negotiable instruments and other securities not yet paid, and which are found in the portfolio or possession of the bankrupt at the time of his stoppage, when such securities have been deposited with the bankrupt, with the simple authority to realise them, and

hold the proceeds at the disposition of the owner; or, when the proceeds have been specially set aside to make certain payments.

Art. 575.—Goods consigned to the bankrupt upon deposit, or to be sold on account of the owner, may be reclaimed as long as they exist as such (*en nature*) wholly or in part. The price, or part of the price, of such goods not having been paid in cash or cash securities, or by way of set-off in current account between the purchaser and the bankrupt, may also be reclaimed.

Art. 576.—Goods sent to the bankrupt, so long as delivery has not taken place in his warehouse or that of the agent instructed to sell them on account of the bankrupt, may be stopped in transitu; but if before arrival the goods have been sold without fraud, upon invoices, bills of lading, or *lettres de voiture* signed by the consignor, they cannot be seized as aforesaid. The party exercising the right to stop in transitu must pay into the estate the moneys received by him on account, as well as all advances made for freight, carriage, commission, insurance, or other expenses, and must defray what remains due in respect of such charges.

Art. 577.—The vendor of goods sold by him to the bankrupt, but not delivered, or which have not been despatched to the bankrupt, or to his agent for his account, may retain the same.

Art. 578.—In the cases provided for in the two preceding Articles, the syndics, by the authority of the *juge-commissaire*, may elect to compel delivery of the goods upon payment to the vendor of the price agreed upon between him and the bankrupt.

Art. 579.—The syndics can, with the permission of the *juge-commissaire*, admit claims for stoppage in transitu or reclamations. In the event of dispute, the tribunal will adjudicate, after having heard the *juge-commissaire*.

CHAPTER XI.

OF APPEALS AGAINST JUDGMENTS IN BANKRUPTCY.

Art. 580.—The judgment, declaring the bankruptcy, and the decision fixing the date anterior thereto as the period of the cessation of payments, can be appealed against by the bankrupt within eight days, and by all other parties within one month. The time for appealing runs from the dates when the formalities relating to publication and advertisements, comprised in Art. 442, have been accomplished.

Art. 581.—No claim on behalf of the creditors to have the date of the cessation of payments fixed at a period other than that determined by the judgment declaring the bankruptcy, or by a subsequent judgment, shall be admitted after the expiration of the delays provided for the proving and affirmation of debts. When such delays have expired, the date determined as that of the cessation of payment shall be final and irrevocable as regards the creditors.

Art. 582.—The time for appealing against all judgments in bankruptcy is within 15 days from the signification of the judgment. The time is increased in the proportion of one day for each five myriamètres of distance in respect to parties who reside beyond five myriamètres from the place in which the tribunal is situate.

Art. 583.—The following are not subject to opposition, nor to appeal to the ordinary Courts, nor to the Supreme Court of Cassation, viz:—

1. Judgments relating to the appointment or replacement of the juge-commissaire, and to the appointment and revocation of the syndics;
2. Judgments deciding as to *sauf-conduits*, and assistance to the bankrupt and his family;
3. Judgments ordering the sale of goods and effects appertaining to the bankruptcy;
4. Judgments ordering the adjournment of the

concordat, or the provisional admission of contested claims;

5. Judgments by which the Tribunal of Commerce decides upon appeals from orders of the juge-commissaire made within the scope of his authority.

TITLE II.

OF FRAUDULENT BANKRUPTCIES.

CHAPTER I.

BANQUEROUTE SIMPLE.

Art. 584.—Cases of banqueroute simple will incur the penalties prescribed by the Penal Code; they are prosecuted before the Tribunaux de Police Correctionnelle, upon the application of the syndics, or of a creditor, or of the public prosecutor.

Art. 585.—Any bankrupt trader shall be declared a banqueroutier simple in the following cases respectively:—1. If his personal and household expenses are deemed excessive; 2. If he has dissipated heavy sums in operations, the result of which depended entirely on hazard, or in fictitious operations connected with the Stock Exchange, or with merchandise; 3. If, with the intention of delaying his bankruptcy, he has made purchases for re-sale under the market value; or if, with the same intention, he has contracted loans, negotiated bills, or availed himself of other similar ruinous means of raising money; 4. If, after cessation of his payments, he has paid any one creditor his debt to the prejudice of the body of creditors.

Art. 586.—Any bankrupt trader can be declared a banqueroutier simple in each of the following cases:—1. If he has contracted on behalf of third parties, without receiving any consideration, liabilities of greater amount than is deemed justifiable, having regard to his position at the time of such undertaking. 2. If he is again declared

bankrupt without having carried through the provisions of a previous concordat. 3. If, being married under the régime dotal, or being separated as regards property from his wife, he has failed to comply with Arts. 69 and 70. 4. If, within three days from the cessation of his payments, he fails to make the declaration at the greffe required by Arts. 438 and 439, or if such declaration does not contain the names of all the parties jointly and severally liable with him. 5. If, without legal excuse, he fails to attend in person before the syndics in the cases and within the periods prescribed, or if, after having obtained a *sauf-conduit*, he fails to appear before the Court. 6. If he has not kept books of account or drawn up an inventory; if his books and inventory are incomplete or irregularly kept, or if they do not show his actual position, debtor and creditor, although there exist no fraud.

Art. 587.—The expenses of prosecution for *banqueroute simple*, instituted by the *ministère public*, cannot in any case be charged against the general fund. In the case of a concordat, the right of the treasury to reimbursement of such expenses against the bankrupt cannot be exercised until after the expiration of the periods granted by such concordat.

Art. 588.—The expenses of the proceedings instituted by the syndics, in the name of the creditors, will be borne, if he is acquitted, by the general body; but if he is convicted, by the treasury. The treasury can proceed against the bankrupt for reimbursement of such expenses pursuant to the preceding Article.

Art. 589.—The syndics cannot prosecute the bankrupt in an accusation of *banqueroute simple*, nor appear in prosecutions as a *partie civile* on behalf of the body of creditors, unless they have been so authorised by a resolution passed by the majority of the creditors present at the meeting at which the proposition was discussed.

Art. 590.—The expenses of prosecution by a creditor shall be borne, if there be a conviction, by the treasury, but by the creditor himself in case of acquittal.

CHAPTER II.

OF FRAUDULENT BANKRUPTCY (Banqueroute Frauduleuse).

Art. 591.—Any trader in bankruptcy having withheld his books, dissimulated or disposed of a part of his estate, or who, either by his entries or by deeds or documents notarial or otherwise, or in his balance-sheet, has fraudulently stated himself to be indebted for moneys which he really is not liable to pay, shall be declared a fraudulent bankrupt, and liable to the penalties prescribed by the penal code.

Art. 592.—The expenses of the prosecution of a fraudulent bankrupt cannot, under any circumstances, be charged against the body of creditors. If one or more of the creditors have intervened as parties civiles in their own names, the costs, in the event of acquittal, must be borne by them.

CHAPTER III.

OF CRIMES AND MISDEMEANOURS COMMITTED IN THE BANKRUPTCY BY OTHER PARTIES THAN THE BANKRUPT.

Art. 593.—The following parties shall be condemned in the penalties appertaining to fraudulent bankruptcy:—

1. Individuals proved to have subtracted or dissimulated, in the interest of the bankrupt, all or a part of the estate, realty or personalty—the whole without prejudice to the other cases provided in Art. 60 of the Penal Code;

2. Individuals proved to have fraudulently presented claims in the bankruptcy and affirmed the same, either in their own name or by interposing other parties;

3. Individuals who, carrying on business under the name of other parties, or under supposititious names, have committed offences provided for in Art. 591.

Art. 594.—The husband and wife, the descendants and the ascendants of the bankrupt, or his relations in the same degree, who have misappropriated, diverted, or concealed assets belonging to the bankruptcy, without having acted in complicity with the bankrupt, will be punished with the penalties appertaining to theft.

Art. 595.—In the cases provided for by the preceding Articles, the Court or the tribunal before which they come, will adjudicate in case even of acquittal:—1. Of its own accord, as to the repayment to the body of creditors of all property, rights, or securities, fraudulently subtracted. 2. As to damages claimed and which the judgment or decision will estimate.

Art. 596.—Every syndic who is proved to be guilty of misconduct in relation to his management shall be criminally punished with the penalties provided for by Art. 406 of the Penal Code.

Art. 597.—A creditor who has stipulated, either with the bankrupt or with any other persons, to receive special advantages for giving his vote in meetings relating to the bankruptcy, or who has entered into a private agreement from which an advantage would arise in his favour, to the prejudice of the assets of the bankruptcy, will be criminally punished with imprisonment, not exceeding one year, and a fine, which shall not be less than 2,000 fs. The imprisonment can be increased to two years if the creditor is syndic of the bankruptcy.

Art. 598.—Such agreements shall also be declared null and void, as regards all persons, and as

regards the bankrupt himself. The creditor shall be compelled to repay all sums and replace all securities which he may have received by virtue of such agreement.

Art. 599.—In case the nullity of these stipulations shall not be sought by means of criminal proceedings, the Tribunal of Commerce shall be competent to decide in the matter.

Art. 600.—All judgments of condemnation rendered, either pursuant to the present chapter or the two preceding chapters, must be published and advertised according to the forms established by Art. 42 of the Code of Commerce, at the expense of the parties condemned.

CHAPTER IV.

OF ADMINISTRATION OF ASSETS IN CASE OF BANQUEROUTE FRAUDULEUSE.

Art. 601.—In all cases of condemnation for banqueroute simple, or banqueroute frauduleuse, the actions civiles, other than those mentioned in Art. 595, will remain separate, and all clauses relating to property prescribed for bankruptcies will be executed, without the execution thereof being prevented by any order whatever of the Ministère Public, which shall have no power to submit them to the appreciation of the criminal authorities.

Art. 602.—The syndics of the bankruptcy are, however, compelled to hand to the Ministère Public the documents, titres (securities), papers, and information which may be demanded from them.

Art. 603.—The documents, titres and papers demanded, delivered by the syndics, will be, during the course of the examination of the matter, detained at the greffier's office. They can be seen upon the application of the syndics, who can take private extracts therefrom, or require certified copies thereof, such copies to be made by the greffier. The

documents, titres and papers, of which the judicial deposit has not been ordered, shall be, after the judgment, handed to the syndics, who will give a receipt for the same.

TITLE III.

OF THE REINSTATEMENT OF THE BANKRUPT.

Art. 604.—The bankrupt who has paid in full, principal, interest, and expenses, and all sums due by him, can obtain his reinstatement; but cannot obtain it, if he is a partner in a commercial firm in bankruptcy, until he has proved that all the debts of the firm have been fully paid, in principal, interest, and expenses, although a special concordat may have been granted to him personally.

Art 605.—Every demand for reinstatement shall be addressed to the Court of Appeal in the district in which the bankrupt is domiciled. The applicant must join to his petition his receipts and other proofs.

Art. 606.—The Procureur Général attached to the Court of Appeal, having perused the petition and evidence, will address certified copies thereof to the Procureur de la République and to the president of the Tribunal of Commerce of the domicile of the applicant; and if the latter has changed his domicile since the bankruptcy, to the Procureur de la République and to the president of the Tribunal de Commerce of the district in which such change has taken place, and shall require them to furnish all information in their power upon the facts contained in such petition, &c.

Art. 607.—To this effect, by the act of the Procureur de la République or the president of the Tribunal of Commerce, a copy of the said petition shall be by them published or posted during two months in the salle d'audience of each Court, as

also in the Bourse and town-hall, and an extract thereof shall be inserted in the public newspapers.

Art. 608.—Any creditor who has not been fully paid his claim in principal, interest and expenses, and any other interested party, can, during the period of the publication, lodge opposition to the reinstatement of the bankrupt, by simply leaving a document at the greffe, with documents justifying his opposition. The creditor opposing can take no part in the proceedings for reinstatement.

Art. 609.—After the expiration of two months, the Procureur de la République and the president of the Tribunal of Commerce shall transmit, each separately, to the Procureur Général of the Court of Appeal the information which they may have been able to obtain and any oppositions which they may have received. They will join thereto their own opinion on the petition.

Art. 610.—The Procureur Général attached to the Court of Appeal will have judgment given rejecting or admitting the petition for reinstatement. If the petition is rejected, it cannot be renewed before another year.

Art. 611.—The judgment deciding reinstatement shall be transmitted to the Procureur de la République and to the presidents of the tribunals to which the petition shall have been presented. These tribunals will have such judgment read in public, and transcribed upon their registers.

Art. 612.—Fraudulent bankrupts, persons condemned for theft, swindling, or abuse of confidence, stellionataires, guardians, administrators, and other accountants, not having rendered or settled up their accounts, cannot be admitted to be reinstated; but a banqueroutier simple, having suffered the punishment to which he has been condemned, can be admitted to reinstatement.

Art. 613.—No bankrupt trader can be admitted upon the Bourse unless he has obtained his reinstatement.

Art. 614.—A bankrupt can be reinstated after his death.

BOOK IV.

OF COMMERCIAL JURISDICTION.

Law decreed on the 14th September, 1807, and
promulgated on the 24th.

TITLE I.

OF THE ORGANISATION OF TRIBUNALS OF COMMERCE.

Art. 615.—The number of Tribunals of Commerce and the towns in which they shall sit shall be decided by a *réglement d'administration publique*, in proportion to the extent of the commerce and industry of such towns.

Art. 616.—The district of each Tribunal of Commerce will be the same as that of the Tribunal Civil in which jurisdiction it is situate. If there are several Tribunals of Commerce in the jurisdiction of a single Tribunal Civil, each of them will be assigned special districts.

Art. 617.—Each Tribunal of Commerce is composed of a presiding judge and of deputy judges. The number of judges cannot be less than two nor more than fourteen, not including the President. The number of deputy judges will be proportioned to the requirements of the business.

A *réglement d'administration publique* will decide

the number of judges and of deputy judges in each tribunal.

Art. 618.—The members of the Tribunals of Commerce are nominated by a meeting of electors chosen from well-known traders recommended by their probity, their love of order and economy. Directors of limited Companies, of financial and industrial enterprises, stockbrokers, captains of vessels undertaking long voyages, and captains of coasting vessels having actually commanded vessels during five years, and domiciled since two years in the district of the tribunal, can be admitted to such meetings.

The number of electors shall be equal to one-tenth of the traders inscribed upon the list of taxpayers.

They cannot exceed 1,000 nor be less than 50. In the district of the Seine the number is 3,000.

Art. 619.—The list of electors will be drawn up by a commission composed as follows:—

1. Of the president of the Tribunal of Commerce, who will preside, and of a judge of the Tribunal of Commerce. At the first election following the establishment of a tribunal, the president of the Tribunal Civil, and a judge of the same tribunal, shall take part in the commission.

2. Of the president and of a member of the Chamber of Commerce. If the president of the Chamber of Commerce is at the same time president of the tribunal, another member will be called upon. In towns in which no Chamber of Commerce exists, the president and a member of the consulting Chamber des Arts et Métiers will be admitted. In default of such, a conseiller municipal will be chosen.

3. Of three conseillers généraux, chosen as much as possible from among the members elected in the canton of the jurisdiction of the tribunal.

4. Of the president of the conseil des prud-hommes, and if there are several, the oldest of the presidents. In default of the conseil des prud-

hommes, the juge-de-paix or the most aged of the juges-de-paix of the town in which the tribunal sits will be called upon.

5. Of the mayor of the town in which the tribunal sits, and at Paris the president of the conseil municipal.

The judges of the Tribunal of Commerce, the members of the Chamber of Commerce, the judge of the Tribunal Civil, the conseillers généraux, and the conseillers municipaux in the cases provided by the preceding paragraph, are elected by the bodies to which they belong.

Each year a commission fills up the vacancies arising from deceases or legal incapacity which may have occurred since the last revision. The commission will add to the list all beyond the number of electors fixed by Art. 619, the former members of the Chamber and Tribunal of Commerce, and the former members of the conseil des prudhommes.

The following parties cannot be inserted on the list, nor take part in the election, even if they have been called upon, viz:—

1. Individuals condemned to certain punishments, viz., criminal penalties pronounced by juries, or punishments decreed by the correctional Courts either in regard of facts qualified as crimes by law, or for the misdemeanour of theft, swindling, abuse of confidence, usury, indecent assault or smuggling, when the conviction for the last misdemeanour has been at least one month's imprisonment.

2. All individuals condemned for infringement of the laws relating to gambling, lotteries and establishments lending money upon security.

3. Individuals condemned in respect of misdemeanours provided for by Arts. 413, 414, 419, 420, 421, 423 and 430, paragraph 2 of the Penal Code, and Arts. 596 and 597 of the Code of Commerce.

4. Public officials who have been dismissed from their functions.

5. Undischarged bankrupts, and generally, all

persons who are prevented from voting at legal elections.

The list shall be sent to the préfet, who will have it published and advertised. A copy signed by the president of the Tribunal of Commerce shall be deposited at the greffe of the Tribunal of Commerce.

Any licensed trader of the district has the right of perusing and at all times demanding the removal of electors who are situated in any of the cases of incompetence above-mentioned. Such action shall be brought without expense in civil Courts, and the chamber of the council will pronounce its decision relating thereto. Should there be an appeal, the Court of Appeal will give its decision in the same form.

Art. 620.—Any trader, director of a limited Company, stockbroker, captain of a vessel undertaking long voyages, and master of a coasting vessel, inscribed upon the list of electors or being in the position required to be so inscribed, can be appointed judge or deputy-judges if he is aged thirty years, if he is inscribed upon the list of licensed traders for five years, and domiciled at the time of the election within the jurisdiction of the tribunal.

Former traders and stockbrokers can be elected if they have carried on their business for the same period.

No person can be named judge unless he has been a deputy-judge.

The president can only be elected from amongst the former judges.

Art. 621.—The elections shall take place by ballot as regards the judges, and the deputy-judges altogether on a single list, and by special ballot as regards the president.

In the event of it being necessary to elect a president, the special object of such election shall be announced before proceeding to ballot.

The elections shall take place in the town in which the Tribunal of Commerce is situated, under

the presidency of the mayor of the chief town or place in which the tribunal is situated, assisted by four assessors, who must be two of the youngest and two of the oldest electors present.

The electors must be convened within the first 15 days of December by the préfet of the district.

At the first turn of the ballot, no person shall be elected if he has not secured one-half and one over of the suffrages, and a number equal to one-fourth of the number of the electors inscribed upon the list.

At the second turn, which shall take place eight days afterwards, a relative majority will be sufficient.

The duration of each ballot to be two hours at least.

The report shall be drawn up in triplicate, and the president will send one copy to the préfet and another to the Procureur Général. The third shall be deposited at the greffe of the tribunal.

Any elector can, within five days after the election, attack the same before the Court of Appeal, which will decide summarily and free of expense to the parties.

The Procureur Général has 10 days within which he may demand to have the election declared void.

Art. 622.—At the first election the president and half the judges and deputy-judges of which the tribunal is composed will be elected for two years. The second half of the judges and of the deputy-judges will be elected for one year.

At the subsequent elections all nominations will be for two years.

All the members included in one single election will be submitted simultaneously to periodical re-election, although one or more may not have exercised his or their functions during the legal periods in consequence of delay in their appointments.

Art. 623.—The president and the judges retiring from their functions after two years can be re-elected immediately for two further years. This

further period being unexpired, they can only be re-elected at the expiration of another year.

Any member elected in the place of another, consequent upon death or any other cause, can only remain in office for the period appertaining to his predecessor.

Art. 624.—A greffier and a huissier appointed by Government will be attached to each tribunal. Their rights, attendances, and duties will be fixed by a *règlement d'administration publique*.

Art. 625.—Gardes de commerce will be appointed for the city of Paris only, for the execution of judgments requiring arrest. The form of their organisation and their duties will be fixed by special regulations. (This Article is repealed by the law abolishing the *contrainte par corps*.)

Art. 626.—Judgments in the Tribunal of Commerce must be rendered by three judges at least. No deputy-judge can be called upon except to complete such number.

Art. 627.—The services of *avoués* are not employed in the Tribunals of Commerce, pursuant to Art. 414 of the Code of Procédure Civile.

No person can plead for any party before these tribunals, unless authorised by the party himself being present at the hearing, or unless provided with a special power of attorney. This power, which can be given at the foot of the original copy writ, must be handed to the greffier before the case is called on, and must be countersigned by him free of expense.

In cases before the Tribunals of Commerce no huissier can take part therein as counsel, nor represent the parties by power of attorney, under penalty of a fine of from 25 fs. to 50 fs., which will be pronounced without appeal by the tribunal, and without prejudice to the penalties of discipline to which huissiers are subject. These provisions do not apply to huissiers who are in the positions provided by Art. 86 of the Code of Civil Procedure.

Art. 628.—The functions of the judges in the Tribunal of Commerce are honorary.

Art. 629.—They must take the oath, before entering upon their duties, before the Court of Appeal, when such Court sits in the district in which the Tribunal of Commerce is established; but in the contrary case, the Court of Appeal can order, if the judges of the Tribunal of Commerce demand it, that the oaths can be received by the Tribunal Civil of the district, and in this case the tribunal will draw up a report and send it to the Court of Appeal, which will order it to be inscribed upon its registers. These formalities will be complied with, on the application of the Ministère Public, and without expense.

Art. 630.—The Tribunals of Commerce are subject to the jurisdiction and the control of the Minister of Justice.

TITLE II.

JURISDICTION OF THE TRIBUNALS OF COMMERCE.

Art. 631.—Tribunals of Commerce may entertain the following, viz.:—

1. Contestations relative to engagements and transactions between merchants and bankers;
2. Contestations between partners in relation to trading enterprises;
3. Contestations relating to acts of commerce between all persons.

Art. 632.—The law considers the following as acts of commerce, viz.:—

1. Any purchase of produce and merchandise for re-sale, either in kind, or after having been worked, or even the letting out on hire of the same;
2. Any enterprise of manufactures, commission, or carriage by land or by water;
3. Any enterprise or undertaking to supply goods,

agencies, commission agencies, establishments for sales by auction, and public amusements ;

4. All operations relating to exchange, banking, and commission ;

5. All operations of public banks ;

6. All obligations between traders, merchants and bankers, and bills of exchange, and the remittance of money from one place to another, as regards all persons.

Art. 633.—The law considers the following also as acts of commerce :—

Any undertaking for the building, and all purchases, sales and re-sales, of ships for interior and exterior navigation ;

All maritime expeditions ;

All sales or purchases of stores and rigging for ships ;

All freight, bottomry, and respondentia ;

All assurance, and other contracts concerning seafaring transactions ;

All agreements and arrangements in relation to wages and the hire of ships ;

All engagements of crews for the service of mercantile vessels.

Art. 634.—The Tribunals of Commerce have also jurisdiction in relation to the following :—

1. Actions against factors, clerks, traders, or their agents, in relation to the business of the trader ;

2. Negotiable instruments subscribed by receivers, paymasters, collectors, or other public Government accountants.

Art. 635. — Tribunals of Commerce have jurisdiction of all that relates to bankruptcies, pursuant to the descriptions of book iii. of the present code.

Art. 636. — In the case in which bills of exchange are considered as simple promises only, by the terms of Art. 112, or when promissory notes bear the signatures of non-traders only, or have not been made in relation to commercial operations, exchange, banking, or commission, the Tribunal

of Commerce must refer such cases to the civil Courts, if so required by the defendant.

Art. 637. — When such bills of exchange and promissory notes bear at the same time signatures of traders and of non-traders, the Tribunal of Commerce has jurisdiction, but it cannot order the arrest of individuals not being traders, unless they enter into engagements in relation to commercial acts, exchange, banking or commission. (The last part of this Article is repealed by the law abolishing *contrainte par corps*.)

Art. 638. — The following are not within the jurisdiction of the Tribunals of Commerce, viz. :—

Actions brought against a landowner, agriculturist, or wine-grower, for the sale of produce arising from the soil cultivated by him ; actions against traders for payment of produce and merchandise bought for their private use. Nevertheless, bills of exchange given by a trader, are reputed to be given in relation to his business ; and those of receivers, paymasters, or other public Government accountants are reputed to be given in relation to their official capacity, unless the contrary appear upon the documents themselves.

Art. 639. — The judgments of the Tribunal of Commerce are final in the following cases :—

1. When the parties subject to such tribunals have voluntarily declared that the case shall be decided definitively and without appeal ;

2. As regards all claims, of which the principal does not exceed the value of 1,500 francs ;

3. Counterclaims and claims of set-off, which, although added to the principal sum, would exceed 1,500 fs. If one of the principal claims or counterclaims amounts to more than such sum, the tribunal can only decide as regards them as a Court of First Instance. Nevertheless, it can decide definitively only upon claims for damages, when they are exclusively based upon the principal demand itself.

Art. 640. — In the districts where there are no

Tribunals of Commerce, the judges of the Tribunal Civil will exercise their functions, and have jurisdiction over the matters appertaining to the commercial judges by the present law.

Art. 641.—The procedure in such case will take place in the same form as before the Tribunals of Commerce, and judgments will produce the same effects.

TITLE III.

OF THE FORM OF PROCEEDING BEFORE TRIBUNALS OF COMMERCE.

Art. 642.—The form of proceeding before Tribunals of Commerce will be followed according to the rules contained in title xxv. book ii., first part of Code of Procédure Civile.

Art. 643.—Notwithstanding, Arts. 156, 158, and 159 of the same Code, relating to judgments by default rendered by the lower tribunals, will be applicable to judgments by default rendered by Tribunals of Commerce.

Art. 644.—Appeals from judgments of the Tribunals of Commerce must be made to the Courts of Appeal in the district in which such Tribunals of Commerce are situated.

TITLE IV.

OF THE FORM OF PROCEEDING BEFORE THE COURTS OF APPEAL.

Art. 645.—The period for appealing from judgments of the Tribunals of Commerce is two months, dating from the day of the signification of the judgment in relation to cases in which decisions have been rendered after both parties have been fully heard, and from the day of the expiration of the time for entering opposition as regards judgments by default. The appeal can be lodged the same day as the judgment.

Art. 646.—In all cases in which the sum in dispute does not exceed the limits fixed by Art. 639 in relation to final judgments, appeals shall not be permitted, notwithstanding that the tribunal should have omitted to qualify such judgments as final; and even if it be, in error, stated that the judgment is rendered subject to appeal.

Art. 647.—The Courts of Appeal cannot, in any case, under penalty of nullity, and even of damages to the parties, if the case arise, forbid the execution of judgments rendered by the Tribunal of Commerce, nor even order that execution thereof shall be delayed, even in case of such judgments being attacked upon the ground of jurisdiction, but the Court of Appeal can, in urgent cases, grant leave to bring the case specially before the Court upon the day and hour to be fixed for the hearing of the appeal.

Art. 648.—Appeals from judgments of Tribunals of Commerce will be adjudicated upon in the same manner as appeals from judgments relating to affaires sommaires.

The procedure until and including the final appeal judgment will be similar to that prescribed for appeals in civil cases contained in book iii. of part i. of the Code of Civil Procedure.

[*End of the "Code of Commerce."*]

TEXT OF SUNDRY GENERAL LAWS PASSED
SINCE THE CODE OF COMMERCE.

THE LAW OF 24TH—29TH JULY, 1867.

ON COMPANIES AND PARTNERSHIPS.

TITLE I.

OF SOCIÉTÉS EN COMMANDITE DIVIDED INTO SHARES.*

Art. 1.—*Sociétés en commandite* cannot divide their capital into shares or coupons of shares of less than 100 fs., when the capital does not exceed 200,000 fs., and of less than 500 fs. when the capital exceeds the above amount.

They are not definitely formed until *the whole* of the capital has been subscribed, and at least one quarter of each share actually paid up. The aforesaid subscription and payments shall be sworn to by the manager before a notary. To the deposition shall be annexed—the list of subscribers, a statement of the amount paid up, the agreement under which the stock Company is formed, executed in duplicate, if the same be *sous seing privé*; and a certified copy thereof, if it be a notarial deed, executed before a notary other than the one before whom the deposition is made. The deed *sous seing privé*, whatever may be the number of parties thereto, must.

* See Commentary in the present work.

be executed in duplicate, one of which shall be annexed, as explained in the preceding paragraph, to the deposition setting forth the subscription of the capital and the payment of the one-fourth, and the other of which shall be deposited at the office of the *Société*.

Art. 2.—The shares or share coupons are negotiable after the payment of one-fourth.

Art. 3.—A stipulation may be made, but it must be set forth in the agreement under which the Company is formed, that the shares or share coupons may, after one-half has been paid up thereon, be converted, by a resolution of a general meeting, into shares payable to bearer. Whether the shares remain payable to order after such resolution, or whether they become converted into shares payable to bearer, the original subscribers who transferred the same, and the transferees to whom such transfers were made, before the payment of the one-half, remain liable for the whole amount payable on the shares for the space of two years from the resolution of the general meeting.

Art. 4.—When a member contributes to the concern an *apport* which does not consist of cash, or which consists of a personal privilege, the first general meeting shall estimate the value of the *apport* and the personal privilege contributed. The Company is not definitely constituted until after the approbation of the *apport*, by a resolution of another general meeting convened for the purpose.

The second general meeting cannot approve the same until a report has been printed and placed at the disposal of the shareholders five days at least before the said meeting. The resolutions may be passed by a majority of the shareholders present. This majority must consist of one-fourth of the shareholders, and represent one-fourth of the capital paid up in cash. Members who have brought in an *apport* or personal privilege to be submitted to the examination of the meeting cannot vote. In default of approbation, the Articles of Association become of no effect as regards all parties. Approbation as above forms no obstacle to the subsequent institution of proceedings in case of fraud. The clauses of the present Article relating to the approval of the *apport* not consisting in cash, are not applicable in the case of a Company to which the said *apport* is made, when such Company is exclusively composed of parties who were already joint-proprietors thereof.

Art. 5.—A committee of inspection, composed of at least three shareholders, shall be appointed in every *Société en commandite par actions*. This committee shall be appointed by the general meeting of shareholders immediately after the definite formation of the *Société* and before the commencement of its business. The committee is subject to re-election at the periods and upon the conditions set out in the Articles of Association. In any case, however, the first committee cannot act for more than one year.

Art. 6.—The first committee must, immediately upon its appointment, examine if all the provisions contained in the preceding Articles have been complied with.

Art. 7.—Every *Société en commandite par actions*, constituted contrary to the provisions of Arts. 1, 2, 3, 4 and 5 of the present law shall be void and of no effect as regards the parties interested therein. This section cannot, however, be set up as a defence against third parties.

Art. 8.—When the Articles of Association are annulled, pursuant to the preceding Article, the members of the first committee of inspection may be declared responsible, together with the manager, for all damages resulting therefrom to the Company or to third parties. The same liability attaches to the members whose *apports* or personal privileges shall not have been approved pursuant to Art. 4.

Art. 9.—The members of the committee of inspection incur no responsibility in relation to acts of administration or the results thereof. Each member of the committee of inspection is liable for his own default in relation to the carrying out of his duties according to the general rules of law.

Art. 10.—The members of the committee of inspection shall verify the books, cash bills, drafts, and other securities of the *Société*. They shall draw up every year for the general meeting a report, in which they shall point out any irregularities or omissions which they may have found in the inventories, and state, should there be occasion, what difficulties exist as to the payment of the dividends proposed by the *gérant*. The shareholders cannot be called upon to reimburse dividends which they may have received, unless such dividends have been paid without drawing up an inventory, or without reference to the position of affairs as shown by the inventory. Actions for return of dividends as above are barred after the

lapse of five years from the day fixed for the distribution of the dividends.

Limitations which have commenced to run at the time of the promulgation of the present law, and which, according to the old laws, do not expire within five years therefrom, shall come within the present law, and bar actions within the time prescribed therein.

Art. 11.—The committee of inspection may call a general meeting, and pursuant to resolution passed thereat, may wind up the Company.

Art. 12.—Fifteen days at least before the date of the general meeting every shareholder may, either by himself or his agent, inspect, at the principal office of the Company, the balance-sheet, inventories, and report of the committee of inspection.

Art. 13.—The issue of shares, or share coupons, of a *Société* constituted contrary to the provisions of Arts. 1, 2, and 3 of the present law, is punishable by a penalty of from 500 to 10,000 fs. The same penalties are applicable as follows :—To the manager who commences operations before the committee of inspection enter upon their functions; parties who, by representing themselves as holders of stock which does not belong to them, have created a fictitious majority at a general meeting, without prejudice to any action for damages to which they may be liable towards the *Société* or third parties; shareholders who have sought to make a fraudulent use of their shares. In the cases provided for in the two preceding Articles, the penalty of imprisonment of from 15 days to six months may be inflicted.

Art. 14.—The negotiation of shares, or of share coupons, the value or form of which are contrary to the provisions of Arts. 1, 2 and 3 of the present law, or in respect of which the payment of one-fourth has not been made pursuant to Art. 2 above mentioned, is punishable by a penalty of from 500 to 10,000 fs. Parties who have participated in the negotiation or issuing of the said shares are punishable by the same penalties.

Art. 15.—The following are liable to the penalties prescribed by Art. 405 of the Penal Code, without prejudice to the application of that Article to all acts constituting the misdemeanour of *escroquerie* (swindling):—1st. Parties who,

under pretence of subscription or payment of calls, or by fraudulent publication of subscriptions or payments which have not been made, or by other fraudulent acts, have obtained, or sought to obtain subscriptions or payments upon shares ; 2nd. Those who, in order to attract subscriptions or payments, have fraudulently and falsely published the names of persons as being or about to become connected with the concern in any capacity whatever. 3rd. The *gérants* who, without drawing up inventories, or by means of false inventories, have paid fictitious dividends to the shareholders. The members of the committee of inspection are not civilly responsible for offences committed by the managers.

Art. 16.—Art. 463 of the Penal Code* is applicable to the cases mentioned in the three preceding Articles.

Art. 17.—Shareholders representing one-twentieth at least of the capital can, in the common interest, depute at their expense one or more agents to institute suits against, or defend suits by, the managers or committee of inspection, and to represent them in Courts of justice and otherwise, without prejudice to the right of each shareholder to bring actions in his own name.

Art. 18.—Companies existing before the Law of 17th July, 1856, and which have not complied with Art. 15 of this law, must within six months appoint a committee of inspection in conformity with the preceding provisions. In default of the appointment of the committee of inspection within the period above mentioned, every shareholder has the right to have the Company dissolved.

Art. 19.—*Sociétés en commandite par actions*, formed previously to the present law, which can by their statutes be transformed into *Sociétés anonymes* authorised by the Government, can be converted into *Sociétés anonymes* upon the conditions specified in chap. ii. of the present law, by complying with the clauses contained in the statutes relating to the transformation.

Art. 20.—The Law of the 17th July, 1856, is hereby repealed.

* Art. 463 of the Penal Code provides for the diminution of penalties when extenuating circumstances are admitted by the jury or by the Court.

TITLE II.

OF SOCIÉTÉS ANONYMES.

Art. 21.—*Sociétés anonymes* can henceforward be formed without the authorisation of the Government. They can be constituted, whatever may be the number of members, by a deed *sous seing privé*, executed in duplicate.

Sociétés anonymes are subject to the provisions of Arts. 29, 30, 32, 33, 34, and 36 of the Code of Commerce, and to the enactments contained in the present chapter.

Art. 22.—*Sociétés anonymes* shall be conducted by one or more managers appointed for a certain time; they are revokable, whether salaried or otherwise, and chosen from amongst the members. These managers may elect a director from amongst them, or if the statutes permit it, appoint a person unconnected with the *Société*, but for whose acts they remain responsible.

Art. 23.—No Company can be constituted with a number of members less than seven.

Art. 24.—The provisions of Arts. 1, 2, 3 and 4, of the present law apply to *Sociétés anonymes*. The depositions required of the manager by Art. 1 shall be made by the founders (promoters) of the *Société anonyme*, and shall be submitted, together with the documents in support thereof, to the first general meeting, which shall examine into its correctness.

Art. 25.—A general meeting shall be, in all cases, convened by the promoters subsequent to the deposition proving the subscription of the capital, and the payment of the fourth in cash. This meeting appoints the first directors; and also, for the first year, the auditors mentioned in Art. 32, *infra*. The directors cannot be appointed for more than six years: they are re-eligible, unless it be provided to the contrary. They can, however, be appointed by the Articles of Association, with a formal stipulation that their appointment shall not be submitted to the approval of the general meeting. In the latter case they cannot be nominated for more than three years. The report of the meeting must set forth that the directors and auditors present at the meeting have accepted the offices tendered. The formation of the Company dates from such acceptance.

Art. 26.—The directors must own a certain number of shares provided for by the statutes of the Corporation. These shares shall constitute a security against the acts of the board of directors, even as regards acts appertaining personally to any one of the directors. They shall be made out to the name of the owner, and be inalienable, marked with a stamp denoting their inalienability, and deposited with the Company.

Art. 27.—A general meeting shall be held, at least once in each year, at the time fixed in the Articles of Association. The statutes determine the number of shares that must be held, either as holder or as agent, for admission to the meeting, and the number of votes belonging to each shareholder, in proportion to the number of shares held by him. Nevertheless, in the general meetings convened to verify the "*apports*," to appoint the first directors, and to examine the depositions of the promoters of the Society, prescribed in the second paragraph of Art. 24, every shareholder, whatever may be the number of shares he possesses, may take part in the meeting with the number of votes accorded to him by the statutes; but he may not, in any case, use more than ten votes.

Art. 28.—In all general meetings resolutions are passed by the majority of votes. A list of the members present is drawn up, containing their names and addresses and the number of shares held by each. This list, certified by the chairman of the meeting, must be deposited at the offices of the *Société*, and be open to the inspection of all persons entitled to demand the same.

Art. 29.—General meetings having to deal with matters other than those provided for in the two following Articles, must be composed of a number of shareholders, representing a quarter at least of the capital of the undertaking. If the general meeting does not fulfil this condition, a further meeting must be called, with the formalities and within the time mentioned in the statutes, and this latter meeting can pass valid resolutions, whatever may be the proportion of capital represented by the shareholders present.

Art. 30.—Meetings for the purpose of approving contributions other than cash, of appointing the first directors, and of examining the deposition made by the promoters according to the terms of paragraph 2 of Art. 24, must be composed of a number of shareholders representing one-half at least of the capital. The capital, of which the half must

be represented for the approval of the *apport*, shall be composed only of *apports* that do not require to be submitted to examination. If the general meeting is not composed of a number of shareholders representing one-half of the capital, it can only pass provisional resolutions. In this case a further meeting must be called. Two notices shall be published at eight days' interval, at least one month in advance, in one of the journals appointed for the insertion of legal advertisements, in order to advise the shareholders of the provisional resolutions passed at the first meeting, and these resolutions shall become final if they are confirmed by the new meeting, if composed of a number of shareholders representing one-fifth at least of the capital of the corporation.

Art. 31.—Meetings which have to decide upon amendments to the statutes, or upon propositions to carry on the undertaking beyond the period fixed for its existence, or to dissolve the Company before such term, are not regularly constituted and cannot pass valid resolutions, unless they are composed of a number of shareholders representing one-half at least of the capital.

Art. 32.—The annual general meeting shall appoint one or more *Commissaires*,* shareholders or otherwise, to prepare a report for the general meeting of the following year upon the financial condition of the corporation, the balance-sheet, and the accounts presented by the directors. A resolution approving the balance-sheet and accounts is void unless it has been preceded by the report of the *commissaires*. In default of appointment of the *commissaires* by the general meeting, or in case of prevention or refusal of one or more of the *commissaires* appointed to act, the president of the Tribunal of Commerce of the principal office of the *Société* shall proceed to appoint the same upon the petition of any party interested, the directors being duly convened.

Art. 33.—During the three months preceding the period fixed by the statutes for the holding of the general meeting, the *commissaires* have the right, whenever they deem it expedient in the interest of the *Société*, to examine the books and investigate its operations. They can at any time, in case of urgency, call a general meeting.

* *Commissaires*. See Dictionary.

Art. 34.—Every *Société anonyme* shall draw up, every six months, a summary statement of its assets and liabilities. This statement shall be placed at the disposal of the *commissaires*. An inventory must also be drawn up every year, pursuant to Art. 9 of the Code of Commerce, containing a list of the real and personal securities, and of all the assets and liabilities of the *Société*. The inventory, the balance-sheet, and the account of profit and loss shall be handed to the *commissaires* four days at latest before the general meeting, and the same shall be presented to the meeting.

Art. 35.—During 15 days at least before the holding of the general meeting, every shareholder can inspect, at the principal office, the inventory and the list of shareholders, and obtain a copy of the balance-sheet containing a summary of the inventory, and of the report of the *commissaires*.

Art. 36.—One-twentieth at least of the nett profits must be set aside every year to form a reserve fund. The above deduction shall be no longer compulsory when the reserve fund amounts to one-tenth of the capital.

Art. 37.—In case of the loss of three-fourths of the capital, the directors must call a general meeting of all the shareholders, to decide as to the expediency of winding up the Company. The resolution of the meeting must, in every case, be made public. In case the directors fail to call a general meeting, and also in case it is not possible to obtain a quorum, any party interested can apply to the Court to dissolve the corporation.

Art. 38.—The winding up may be ordered upon the petition of any party interested, when one year has elapsed since the date at which the number of members became reduced to less than seven.

Art. 39.—Art. 17 applies to *Sociétés anonymes*.

Art. 40.—The directors are prohibited from receiving any interest, directly or indirectly, in any undertaking or transaction entered into by, with, or on account of the *Société*, unless with the sanction of the general meeting. A special account must be rendered to the general meeting each year of the carrying out of the undertakings or transactions so authorised in the terms of the preceding paragraph.

Art. 41.—Every *Société anonyme* which has not complied with the provisions of Arts. 22, 23, 24 and 25, above

mentioned, is void and of no effect as regards the members thereof.

Art. 42.—When the Company has been dissolved, or the acts and resolutions thereof have been pronounced void, pursuant to the preceding Article, the promoters, whose default has occasioned the same, and the directors in office at the time, are jointly and severally liable to third parties, without prejudice to the rights of the shareholders. The same liability attaches to these members whose *apports* or privileges have not been approved pursuant to Art. 24.

Art. 43.—The extent and effects of the liability of the *commissaires* to the *Société* are determined according to the general rules legally applicable to agents.

Art. 44.—The directors are liable, individually, or jointly and severally, to the *Société*, or to third parties, according to the general rules of law, either for infringements of the provisions of the present law, or for faults committed by them in their management, especially for distributing, or allowing to be distributed, dividends that are fictitious.

Art. 45.—The provisions of Arts. 13, 14, 15 and 16 of the present law apply to *Sociétés anonymes*, without distinction between those actually existing and those constituted pursuant to the present law. Directors who, in the absence of an inventory, or by a false inventory, have distributed fictitious dividends, incur the penalties enacted by No. 3 of Art. 15 relating to managers of *Sociétés en commandite*. The last three paragraphs of Art. 10 are also applicable to *Sociétés anonymes*.

Art. 46.—*Sociétés anonymes* which are in existence at the date of the present law, shall, for their entire duration, be subjected to the provisions which now govern them. They can be changed into *Sociétés anonymes* within the terms of the present law by obtaining the authorisation of the Government, and complying with the forms prescribed for the modification of their statutes.

Art. 47.—Limited Liability Companies can be converted into *Sociétés anonymes* within the terms of the present law, by conforming to the rules drawn up for the modification of their statutes. Arts. 31, 37 and 40 of the Code of Commerce, and the Law of 23rd May, 1863, upon Limited Liability Companies, are hereby repealed.

TITLE III.

SPECIAL PROVISIONS RELATING TO SOCIÉTÉS WITH VARIABLE CAPITAL.

Art. 48.—A stipulation can be made in the statutes of every *Société* that the capital may be increased by successive payments made by the members, or by the admission of new shareholders, or be diminished by the total or partial withdrawal of the *apports* contributed. *Sociétés* whose statutes contain the above stipulation are subject to the following clauses, irrespective of the general rules applicable to them according to their special constitution.

Art. 49.—The capital shall not be fixed by the original statutes of the *Société* at more than the sum of 200,000 fs. It may be increased by a resolution of a general meeting, year after year; each increase shall not exceed 200,000 fs.

Art. 50.—The shares or share coupons shall be *nomi-native*, even when fully paid up; they cannot be less than 50 fs. in value. They are not negotiable until after the definite constitution of the *Société*. The negotiation of them can only take effect by means of transfers inscribed in the books of the *Société*, and the statutes can give, either to the board or to the general meeting, the right to refuse such transfer.

Art. 51.—The statutes shall fix an amount beneath which the capital must not be reduced by the withdrawal of the *apports* authorised by Art. 48.

The above amount must not be inferior to one-tenth of the capital. The *Société* shall not be deemed definitely constituted until one-tenth be paid up.

Art. 52.—Every member can retire from the *Société* whenever he thinks fit, unless there are stipulations to the contrary, and unless such withdrawal would be in violation of paragraph 1 of the preceding Article. It may be stipulated that the general meeting shall have the right to decide by the majority fixed for the modification of the statutes, that one or more of the shareholders cease to belong to the *Société*. A member ceasing to belong to the *Société*, either by his own will or by decision of the general meeting, shall remain liable during five years to the shareholders and to third parties for all obligations entered into by him, and existing at the time of his withdrawal.

Art. 53.—The *Société*, whatever may be its form, may be legally represented in Courts of law by the directors.

Art. 54.—The *Société* shall not be dissolved by the death, withdrawal, *interdiction*, bankruptcy or insolvency of one of the members; it remains undissolved as regards the other members.

TITLE IV.

PROVISIONS RELATING TO THE PUBLICATION OF THE ARTICLES OF ASSOCIATION.

Art. 55.—Within a month from the constitution of any mercantile Company or partnership, a duplicate of the deed constituting the same, if it be *sous seing privé*, or a copy, if the document be a notarial deed, must be filed in the offices of the justice of the peace, or of the *Tribunal de Commerce* of the place in which the Company or partnership is established. The following papers shall be annexed to the deed of constitution of *Sociétés en commandite par actions*, and *Sociétés anonymes*: 1. A copy of the notarial deed, setting forth the subscription of the capital and the payment of a fourth; 2. A certified copy of the resolutions passed at the general meeting in the cases provided for by Arts. 4 and 24. Apart from the above, when the *Société* is *anonyme*, a duly certified list of the names of the subscribers, including their christian and surnames, professions and addresses, and the number of shares held by them respectively, must also be annexed as above.

Art. 56.—Within the same period of one month, an extract from the Articles of Association, and from the documents annexed thereto, must be advertised in one of the journals appointed for the publication of legal notices. A copy of the journal, certified by the printer and legalised by the mayor and registered within three months of its date, shall be evidence of such insertion. The formalities prescribed by the preceding and present Articles must be complied with, or they will be void as regards the members, but such default cannot affect the rights of third parties.

Art. 57.—The extract must contain the names of the members other than the shareholders or *commanditaires*; the firm, name, or title of the *Société*, and the address of the principal office; the names and offices of the members entrusted

with the management, direction, and signature on behalf of the *Société*, the amount of capital and amount of securities or property brought in or to be brought in by the shareholders or *commanditaires*; the date when the *Société* is to commence operations and the duration of the undertaking, and the date when the deposits were made as above at the offices of the justice of the peace and Tribunal of Commerce.

Art. 58.—The extract must state whether the *Société* is *en nom collectif*, or *en commandite simple*, or *en commandite par actions*, or *anonyme*, or *à capital variable*. If the *Société* is *anonyme*, the extract must show the amount of the capital in cash or otherwise, and the proportion of profits to be set aside as a reserve fund.

Lastly, if the *Société* is *à capital variable*, the extract must state the sum beneath which the capital cannot be reduced.

Art. 59.—If the *Société* possesses several branches in various districts, the deposit required by Art. 55, and the publication prescribed by Art. 56, must be made in each of the districts. In cities divided into several districts, the deposit need only be made at the *greffe* of the justice of the peace of the district in which the principal office is situate.

Art. 60.—The extract of the deeds and documents deposited must be signed by the notary in the case of notarial or “public deeds,” and in the case of deeds *sous seing privé*, by the members *en nom collectif*, by the managers in *Sociétés en commandite*, and by the directors in *Sociétés anonymes*.*

Art. 61.—The following are subject to the formalities and to the penalties prescribed by Arts. 55 and 56: All

* The formalities above prescribed must be fulfilled, or the proceedings will be void; but it must be remarked that the shareholders or members cannot plead defect in formalities against third parties. They can only plead the same as between themselves; thus, in case the *Société* has not been regularly “published,” any member can proceed against his co-partners in the Tribunal of Commerce to obtain a declaration that the *Société* should be declared dissolved *ab initio*, and demand the appointment of a *liquidateur judiciaire*, to realise the assets and discharge the liabilities of the undertaking.

It has already been explained what parties, as regards *Sociétés par actions*, are responsible for such dissolution, both towards other members and towards third parties. In *Sociétés en nom collectif*, or *en commandite simple*, the managers (*gérants*) are liable for the carrying out of the requisite formalities.

deeds and resolutions made with the object of modifying the statutes, continuing the *Société* beyond the term fixed for its duration, dissolving the same before that period and fixing the mode of liquidation, all changes and retirements of members, and all changes in the firm, name or title. The resolutions passed in the cases provided for by Arts. 19, 37, 46, 47 and 49, above appearing, are also subject to the provisions of Arts. 55 and 56.

Art. 62.—Documents relating to the increase or diminution of the capital in the terms of Art. 48, or to the retirement of members other than managers or directors, taking place pursuant to Art. 52, are not subject to the formalities of deposit and publication.

Art. 63.—In the case of *Sociétés en commandite par actions*, or *Sociétés anonymes*, any person has the right to inspect the documents deposited with the justice of peace and at the Tribunal of Commerce, or even, at his own expense, to receive copies or extracts from the officer of the Court, or from the notary. All persons can also insist upon having delivered to them, at the principal office, a certified copy of the statutes, upon payment of a sum not exceeding one franc. The documents deposited must be posted up prominently in the offices of the *Société*.

Art. 64.—In all deeds, invoices, advertisements, publications and other documents, *printed or in writing*, issued by *Sociétés anonymes*, or by *Sociétés en commandite par actions*, the title must be always preceded or followed immediately by the following words, plainly written in full characters, *Société anonyme*, or *Société en commandite par actions*, and by a statement of the amount of the capital. If the *Société* has availed itself of the provisions of Art. 48, this fact must be mentioned by the addition of the words, *à capital variable*. Any infringement of the preceding clauses is punished with a penalty of from 50 to 1,000 fs.

Art. 65.—The provisions of Arts. 42, 43, 44, 45 and 46 of the Code of Commerce are hereby repealed.

TITLE V.

OF TONTINES AND OF INSURANCE COMPANIES.

Art. 66.—Associations formed under the tontine system, or of the nature of mutual or premium life assurance Companies, remain subject to the authorisation and the inspection of Government.

Other species of insurance Companies can be formed without authorisation. A *réglement d'administration publique* shall determine the conditions under which they can be constituted.

Art. 67.—Insurance Companies, designated in paragraph 2 of the preceding Article, which are in actual existence, can place themselves under the *régime* which will be established by the *réglement d'administration publique*, without the authorisation of the Government, upon observing the forms and conditions prescribed for the modification of their statutes.

IMPERIAL DECREE.

RÈGLEMENT D'ADMINISTRATION PUBLIQUE,
UPON THE INCORPORATION OF INSURANCE
COMPANIES.

Issued the 22nd January, 1868.

TITLE I.

OF PREMIUM INSURANCE COMPANIES (SOCIÉTÉS ANONYMES
D'ASSURANCE À PRIMES).

Art. 1.—Premium insurance Companies shall be subject to the provisions of the laws relating to this form of Society, and in addition, to the provisions hereinafter stated.

They shall not avail themselves of the provisions of Title iii. of the Law of the 24th July, 1867, peculiar to *Sociétés à capital variable*.

Art. 2.—The Company shall not be validly incorporated until actual payment of a capital to cover risks, which shall not be less than 50,000 fs., even if the nominal capital is less than 200,000 fs.

Art. 3.—Art. 3 of the Law of the 24th July, 1867, relative to the conversion of registered stock into stock payable to bearer, is only applicable to premium insurance Companies if the reserve fund is equal to not less than the part of the nominal capital not yet paid up, and if it has been actually paid in.

Art. 4.—Every Company shall annually withdraw from the nett profits at least 20 per cent. thereon to form a reserve fund. This withdrawal shall not be compulsory when the reserve fund amounts to one-fifth of the capital.

Art. 5.—The capital of the Company, with the exception of the sums necessary for the current business, shall be invested in real estate, Government securities, Treasury bonds, or other securities created or guaranteed by the State, stock of the Bank of France, bonds of departments or communes, of the *Crédit Foncier* of France, or of French railway Companies to whom the State has guaranteed a minimum of interest.

Art. 6.—Every policy shall set forth—

1. The amount of the nominal capital;
2. How much of the capital has been already paid up or called in, and the conditions under which the registered stock may have been converted into stock payable to bearer, if such has been the case.
3. The maximum which the Company can, under its statutes, insure upon a single risk, without re-insurance;
4. And, in case the same capital shall cover, under the statutes, risks of a different nature, the amount of the capital and the enumeration of all the risks.

Art. 7.—Every party insuring may at all times require, either personally or by power of attorney, either at the principal place of business of the insurance Company, or at the agencies established by the Company, a copy of the last inventory.

Such party may also demand delivery of a certified copy upon the payment of a sum which may not exceed one franc.

TITLE II.

MUTUAL INSURANCE COMPANIES.

SECTION I.

OF THEIR INCORPORATION AND OBJECT.

Art. 8.—Mutual insurance Companies may be formed either by *acte authentique*, or by *acte sous seing privé*, executed in duplicate, whatever may be the number of parties signing the same.

Art. 9.—The proposed statutes shall—

1. Set forth the object, duration, principal office, and name of the Company, and the geographical limits of its operations;
2. Set forth the table of classification of risks, the tariffs applicable to each, and the forms under which the table and its tariffs may be modified;
3. Establish the number of members and the minimum of guaranteed contributions beneath which the Company cannot be validly formed, as well as the proportion of the contribution of the first year, which shall be paid up before the valid formation of the Company.

Art. 10.—The whole of the text of the proposed statutes shall be set forth upon every list made out for the purpose of obtaining members.

Art. 11.—When the above-mentioned conditions shall have been fulfilled, the parties signing the original *acte*, or their attorneys, in fact, shall acknowledge it before a notary.

To this acknowledgment shall be annexed—

1. A list setting forth the names of the members, their Christian names, their professions and domiciles, and the amount of insurance taken by each;
2. One of the duplicates of the Articles of Association, if they are *sous seing privé*, or a copy if they have been executed before a notary other than he who receives the acknowledgment;
3. A statement of the amounts paid up.

Art. 12.—The first general meeting which is convened

by the parties who signed the original agreement shall verify the correctness of the affidavit mentioned in the preceding Article; it shall elect the members of the first board of directors, and the auditors for the first year, pursuant to Art. 21 of this Act.

The members of the board of directors cannot be appointed for more than six years; they are re-eligible unless a stipulation to the contrary exist. The statutes, or Articles of Association may, however, contain a formal stipulation that their nomination shall not be submitted to the general meeting; in this case they shall not be appointed for a longer period than three years.

The report of the meeting shall set forth the acceptance of the members of the board of directors or council of administration, and of the auditors present thereat.

The Company is not validly incorporated until after such acceptance.

Art. 13.—The account of expenses of the preliminary proceedings shall be examined by the board of directors, and submitted to the general meeting, which shall finally settle it and determine the mode and period of repayment.

SECTION II.

MANAGEMENT.

Art. 14.—The management may be confided to a board of directors, the powers of which shall be determined by the statutes. The members of such board may choose a manager from amongst them, or, if the statutes permit it, appoint a person as manager who has no connection with the Company, and the board remains responsible to the Company with respect to such appointment.

The management may also be confided by the statutes to a director named by the general meeting, assisted by a council of directors. The statutes shall determine in this case the respective duties of the manager and of the council.

Art. 15.—The members of the board of directors must be taken from amongst the members who have taken insurance to the extent required by the Articles of Association.

Art. 16.—A general meeting shall be held once in every

year, at the period fixed by the statutes. The statutes shall determine either the minimum of risks insured necessary in order to secure admission to the meeting, or the number of those who have insured for the largest amount which must be represented in it. They shall also fix the mode according to which members can have themselves represented at such meeting.

Art. 17.—In all general meetings a register shall be kept, which shall set forth the names and addresses of the members present. This sheet, certified by the chairman and his colleagues sitting with him at the meeting, and deposited at the registered office, must be held at the disposal of all applicants.

Art. 18.—No general meeting shall have capacity to act, unless one fourth of the members who have the right to be present are present. If it does not consist of this number, a new meeting shall be convened, with the formalities and within the time prescribed by the statutes, and such meeting may legally transact business, whatever may be the number of members present or represented.

Art. 19.—The general meeting called to deliberate upon the election of the members of the first board of directors, and upon the truth of the declaration made, pursuant to Art. 11, by the parties signing the original agreement, must be composed of one-half at least of the members entitled to be present.

If the general meeting shall not include the number above mentioned, it can adopt only a provisional decision; in this case a new general meeting shall be called. Two notices, published at an interval of eight days, at least one month in advance, in one of the journals chosen for the purpose of legal advertisements, shall notify to the members the provisional resolutions adopted by the first meeting, and these resolutions shall become conclusive if they shall be approved by the new meeting, composed of one-fifth at least of the members who have the right to attend it.

Art. 20.—The meetings which have to consider amendments to the statutes, or propositions for prolonging the term of the Company beyond that fixed for its duration, or for its dissolution before the expiration of its term, shall not be valid or capable of acting unless they shall be composed of at least one-half of the members who have a right to attend them.

A notice of every amendment of the statutes shall be given to the members in the first *recepissé de cotisation* which shall be delivered to them.

Art. 21.—The annual general meeting shall appoint a committee of one or several auditors, whether members or not, to make a report to the general meeting of the following year upon the condition of the Society, upon its balance-sheet, and upon the accounts presented by the directors.

The approval of the balance-sheet and accounts shall be invalid if it shall not have been preceded by the report of the committee.

In case no committee of auditors is appointed by the general meeting, or in case one or more of the committee be prevented from serving thereon, their re-election may be obtained by an order of the President of the Court of First Instance having jurisdiction for the principal place of business of the Company, upon the application of any party interested, and upon notice being sent to the board of directors.

Art. 22.—During the three months which precede the time fixed by the statutes for the general meeting, the committee shall have the right, whenever they may think it advisable in the interests of the Company, to examine the books and the operations of the said Company. They may at any time, in case of need, call a general meeting.

Art. 23.—Every Company shall, every six months, make out a summary statement of its assets and liabilities. This statement shall be placed at the disposal of the committee.

Every year an inventory shall be drawn up, as well as a detailed account of receipts and expenses of the preceding year, including the amount paid for casualties.

These divers documents shall be held at the disposal of the committee within forty days of the general meeting. They shall be presented to the meeting.

The inventory and the detailed account shall also be submitted to the minister of agriculture, commerce and public works.

Art. 24.—Fifteen days at least before the general meeting, every member may inspect, either personally or by power of attorney, at the principal place of business of the Society, the inventory and the list of members who compose the general meeting, and may demand a copy of these papers.

· SECTION III.

OF THE FORMATION OF THE MUTUAL CONTRACT.

Art. 25.—The statutes shall determine the mode and the general conditions according to which the engagements between the Company and its members are to be made and controlled. Nevertheless, the members shall have, independently of any provision in the statutes, the right to retire every five years upon giving notice to the Company six months in advance in the form indicated hereafter. This right shall be reciprocal as regards the Company.

In all the cases in which a member has the right to demand the cancellation of the contract so far as he is concerned, he can do so either by a declaration at the principal office of the Company or at the office of its local agent, a receipt for which shall be handed to him, either by an *acte extra-judiciaire*, or by any other mode pointed out by the statutes.

The statutes shall especially set forth the manner according to which the valuation of the goods insured shall be made, the reciprocal conditions under which the policy may be extended or cancelled, and the circumstances under which they shall be forfeited.

Art. 26.—Any modification of the statutes relative to the nature of the risks assured, and to the extent of their geographical limits, gives, *ipso facto*, to each member the right of withdrawing from the Company.

Such right must be exercised by him within a period of three months from the date of the notification which shall have been made to him, pursuant to Art. 20.

Art. 27.—The statutes cannot forbid members reinsuring and insuring in other Companies. They can only stipulate that the Company be immediately informed thereof, and shall have the right to give notice that the contract be cancelled thereupon.

Art. 28.—The policies made out to the insured must contain the special conditions of the engagement, its duration, as well as the conditions under which it may be broken or tacitly prolonged, if such exist in the statutes.

The policy must further state that a copy of the entire text of the statutes has been handed to the party assured.

SECTION IV.

OF THE LIABILITIES OF THE COMPANY.

Art. 29.—The tariffs annexed to the statutes fix, in proportion to the risks, the annual maximum to which each member shall be liable for the payment of losses.

This maximum constitutes the guarantee fund.

The statutes may provide that each member be compelled to pay in advance a portion of the joint contribution, in order to form a reserve fund. The amount of such payment, the maximum of which is fixed by the statutes, shall be determined every year by the general meeting.

Art. 30.—If the statutes provide therefor, the directions included in the table of classification shall not prevent the Board of Directors from having discretion as to the application of the same to risks proposed for insurance, or even as to the admissibility of such risks.

Art. 31.—The statutes shall also fix the maximum of the annual contribution which can be exacted from each member for expenses of the management of the Company.

The amount of such contribution shall be fixed every five years at least by the general meeting.

The statutes or the general meeting may provide that a fixed or proportional sum be allowed *à forfait* to the board of directors. Such decision shall be revised every five years at least. The resolution that authorises or approves the same shall specify in a precise manner what are the expenses for which the sum allowed is to provide.

Art. 32.—In every mutual insurance Company a reserve fund may be formed, with the object of giving to the Company the means of supplying any insufficiency which may arise as regards the annual contributions for the payment of losses. The amount of the reserve fund shall be fixed every five years by the general meeting, notwithstanding any stipulation in the statutes to the contrary.

The statutes shall prescribe the manner in which this fund shall be raised, and how it shall be expended, subject to the application of the following provisions:

In no case shall the sum to be taken from the reserve fund exceed one-half of such fund for any single account.

In case the Company is dissolved, the disposition of the

remainder of the reserve fund shall be determined by the general meeting, upon the motion of the members of the board of directors, and submitted to the approbation of the Minister of Agriculture, Commerce and Public Works.

Art. 33.—The funds of the Company must be invested in Treasury bonds, or other securities created or guaranteed by the State, in shares of the Bank of France, in bonds of departments or communes, of the Credit Foncier of France, or of French railway Companies which have a minimum of interest guaranteed by the State. These securities shall be registered in the name of the Company.

SECTION V.

DECLARATION, VALUATION, AND PAYMENT OF LOSSES.

Art. 34.—The statutes shall determine the manner and the conditions under which the declaration shall be made by the members in case of disaster, in order to regulate the indemnities which may become due to them.

Art. 35.—The valuation of the losses shall be made by an agent of the Company, or any other expert named by the Company, and the member or an expert chosen by the members; in case of conflict, the matter shall be referred to a third expert named, in default of agreement between the parties, by the president of the Tribunal of First Instance of the district, or if the statutes have so decided it, by the justice of the peace of the *canton* where the loss took place.

Art. 36.—Within three months after the expiration of each year, a general settlement of the losses of the past year shall be made, and each party entitled thereto shall receive, if it takes place, the balance of the indemnity calculated to be due to him.

Art. 37.—In the case of insufficiency of the guarantee fund, and of the portion of the reserve fund determined by the statutes, the indemnity of each party entitled thereto shall be proportionately diminished.

SECTION VI.

PROVISIONS RELATING TO THE PUBLICATION OF THE
ARTICLES OF ASSOCIATION.

Art. 38.—Within a month after the incorporation of any mutual insurance Company, a copy of the *acte notarié* and of the schedules annexed thereto, shall be deposited at the *greffe* of the justice of the peace, and at the Civil Tribunal, if one exists, of the place in which the Company is established. To this copy shall be annexed a certified copy of the resolutions passed by the general meeting in the cases provided by Art. 12.

Art. 39.—Within the same period of one month, an extract from the certificate of incorporation and of the documents annexed thereto shall be published in one of the journals designated for receiving legal advertisements. The insertion thereof shall be proved by a copy of the journal, certified by the printer and legalised by the *maire*, and *enregistré* within three months from its date.

Art. 40.—The extracts shall contain the name adopted by the Company, its principal office, the names of the persons authorised to manage, administer, and to sign for the Company, the number of members, and the minimum contributions guaranteed below which the Company cannot be validly incorporated; the period when the Company commenced, that when it must terminate, and the date of the deposit made at the *greffes* of the justice of the peace and of the Court of First Instance. It shall set forth also whether the Company is or is not to set aside a reserve fund.

The extract of the deeds and documents deposited shall be signed—those that are notarial deeds by the notary, and those that are *sous seing privé* by the members of the board of directors.

Art. 41.—The following shall be subject to the formalities hereinbefore prescribed, viz.:—All documents and resolutions having for object the amendment of the statutes, the continuation of the Company beyond the term fixed by the statutes, its dissolution before this term, any changes in its denomination, or the transformation of the Company upon the conditions indicated in Art. 67 of the law of the 24th July, 1867.

Art. 42.—Any person has a right to inspect the documents deposited at the *greffes* of the justice of the peace and of the Tribunal of First Instance, or even to obtain at his own expense a copy or extract from the *greffier* or from the notary with whom the deed was deposited. Any person may also insist upon having delivered to him, at the registered office of the Company, a certified copy of the statutes, upon payment of a sum which shall not exceed one franc.

Lastly, the document deposited must be posted up conspicuously in the offices of the Company.

LAW REGULATING NEGOTIATIONS CONCERNING GOODS DEPOSITED IN BONDED WAREHOUSES.

Law of the 28th May, 1858.

Art. 1.—*Magasins généraux* (bonded warehouses), established by virtue of the decree of the 21st May, 1848, and others which may be created in the future, are for the purpose of storing raw material, goods and manufactures, which merchants and traders may desire to deposit therein. Such warehouses are established and supervised by the Chambers of Commerce, or Government acting upon the advice of the *Chambres Consultatives des Arts et Manufactures*. They are subject to the superintendence of the Government.

Receipts shall be delivered to depositors, and shall contain their name, profession and domicile, the nature of the goods deposited, and details necessary to establish the identity and value thereof.

Art. 2.—To each receipt for goods shall be annexed, under the name of warrant, a pledge containing the same particulars as the receipt.

Art. 3.—Receipts and warrants shall be, together or separately, transferable by endorsement.

Art. 4.—Endorsement of a warrant, without endorsement of the corresponding receipt, shall be equivalent to a pledge of the goods for the benefit of the endorsee. Endorsement of the receipt conveys to the transferee the right of disposing of the goods, with the liability on his part, when the warrant is not also transferred with the receipt, to pay any

claims that may be secured by the warrant, or to allow the amount thereof to be paid out of the proceeds realised by the sale of the goods warehoused.

Art 5.—Endorsement of the receipt and of the warrant, whether made together or separately, must be dated. The endorsement of the warrant, separately from the receipt, must also specify the amount of capital and interest secured, the date of its maturity, and the name, profession, and domicile of the creditor.

The first endorsee of the warrant must immediately have the endorsement recorded upon the registers of the warehouse, with the particulars accompanying the same. A note of such registration must be made upon the warrant.

Art. 6.—The endorsee of the receipt, though not the endorsee of the warrant, may pay the claim secured by the warrant even before its maturity. If the endorsee of the warrant is not known, or if, being known, he does not agree with the debtor as to the conditions upon which the discount shall be made, the amount due, together with interest until maturity, may be deposited with the managers of the warehouse, who will be responsible for the same. Such payment discharges the goods.

Art. 7.—In default of payment at maturity, the endorsee of the warrant, though not the endorsee of the receipt, may, eight days after protest, and without any judicial procedure, sell at public auction the lot of the goods in question, according to the forms and by the public officials indicated by the Law of the 28th May, 1858.

In case the first subscriber of the warrant had reimbursed it, he can proceed to the sale of the goods, as described in the previous paragraph, against the bearer of the receipt eight days after maturity, and without notice.

Art. 8.—The holder of the warrant is paid his claim out of the price, directly and without legal formality, by privilege and preference to other creditors, without any other deduction than—

1. Indirect contributions, *octroi* duties, and *douane* payable upon the goods;
2. Expenses of sale, warehousing, and other acts for the preservation of the merchandise.

If the bearer of the receipt does not present himself at the sale of the goods, the amount exceeding that which

is due to the bearer of the warrant is paid to the manager of the *magasin general*, as mentioned in Art. 6.

Art. 9.—The bearer of the warrant has no recourse against the borrower or the endorsers until he has exercised his rights upon the goods, and in case of insufficiency. The periods fixed by Art. 165, and following, of the Code of Commerce, for the exercise of recourse against endorsers, are reckoned only from the day when the sale of the goods took place. The bearer of the warrant loses in that case his recourse against the endorsers, if he has not proceeded to the sale within one month from the date of the protest.

Art. 10.—Bearers of receipts and of warrants have, upon the indemnity of insurance due in case of loss, the same rights and privileges as related to the merchandise insured.

Art. 11.—Public establishments of credit can receive warrants as negotiable paper, though lacking of one of the signatures exacted by their statutes.

Art. 12.—A party who has lost a receipt or a warrant may demand and obtain, by a judge's order, by proving his right thereto, and by giving security, a duplicate thereof in the case of a receipt, and payment of the secured claim in the case of a warrant.

Art. 13.—The receipts shall be stamped, and be liable to a fixed registration fee of one franc.

The provisions of Title i. of the Law of the 15th June, 1850, and of Art. 49, § 2, No. 6, of the Law of the 22nd *Frimaire*, Year VII., are applicable to warrants endorsed separately from receipts. The endorsements of a warrant separate from a receipt, unstamped, or not *visé pour timbre*, pursuant to law, cannot be transcribed or mentioned upon the registers of the warehouse, under penalty against the proprietor of the warehouse of a fine equal to the amount of duty to which the warrant is subject.

The parties charged with the custody of the registers of the *magasins-généraux* are compelled to communicate them to the representatives of the *enrégistrement* in the manner prescribed by Art. 54 of the Law of the 22nd *Frimaire*, Year VII., and subject to the penalties provided.

Art. 14.—A *règlement d'administration publique* shall prescribe the measures necessary to the execution of the present law.

Art. 15.—The decree of the 21st March, 1848, and of the 26th March of the same year, are hereby repealed. The Decree of the 23rd and 26th August, 1848, so far as it is contrary to the present Law, is also repealed.

LAW RELATING TO TAXES UPON SECURITIES
PAYABLE TO BEARER; TO THE RATE OF
COMMUTATION FOR STAMPS, AND FOR
SECURITIES AND BONDS OF THE CRÉDIT
FONCIER; TO DUTIES UPON BONDS ISSUED
BY CITIES, PROVINCES, AND CORPORA-
TIONS.

Law of the 30th March, 1872.

Art. 1.—From the 1st April, 1872, the tax of 15 centimes upon the negotiation of securities payable to bearer of every kind, established by the Law of the 23rd June, 1857, is fixed at 25 centimes yearly. This tax, as well as that of 50 centimes upon the negotiation of securities payable to order established by Art. 11 of the Law of 16th September, 1871, shall be estimated in the future upon their nominal value, allowance being made for payments still due upon such securities as have not been altogether paid up.

The *tarif d'abonnement* for stamps upon hypothecated securities and bonds of the *Crédit Foncier*, established by Art. 29 of the Law of the 8th July, 1852, is hereby raised to 5 centimes per 1,000 fs.

Town bonds, and bonds of provinces and foreign corporations, of whatever kind, and of every other foreign and public establishment, shall be subject to a tax similar to that which has been established by the present Law, and by that of the 5th June, 1850, on stamps.

They shall not be quoted or negotiated in France unless the above taxes are paid.

A *règlement d'administration publique* shall establish the method of computation and payment of the tax upon these securities, which shall be calculated upon a fixed proportion of the principal thereof.

Art. 2.—No one may negotiate, expose for sale, or set forth in written contracts evidencing loans, deposits, or pledges, or in any other manuscript, with the exception of inventories, foreign securities which shall not have been quoted or shall not have been duly stamped with a stamp representing one per cent, on their nominal value.

Every paper, whether *public* or *sous seing privé*, which sets forth an annuity or security of a foreign government, and every other foreign security not quoted at the French Bourses, shall specify its date and the number of *visé pour timbre* affixed thereto, as well as the amount of the tax paid.

Every failure to comply with these provisions may be exposed in every place open to the public, by the agents who are qualified to certify in matters of stamps.

Such failure shall be punished by a fine of five per cent. upon the nominal value of the securities which shall have been negotiated, exposed for sale, or set forth in manuscript, or which shall have been in any way used.

In no case shall the fine be less than 50 fs.

All parties are jointly and severally liable for the recovery of taxes and fines.

A fine of 50 fs. shall be personally incurred by every public officer or agent who shall have failed to comply with the provisions aforesaid.

Art. 3.—The two-tenths added to the principal amount of stamp tax of every nature, by Art. 2 of the Law of 23rd August, 1871, are applicable to the *taxe d'abonnement*, which may be exacted after the promulgation of the present Law, whatever may have been the moment at which the *abonnement* was made.

Art. 4.—Acknowledgments and receipts given, whether by letter or otherwise, to establish the deposit of commercial papers for the purpose of negotiation, acceptance, or safe-keeping, are exempt from every kind of stamp tax on acknowledgments, receipts, or discharges.

IMPERIAL DECREE CONCERNING THE NEGOTIATION OF FOREIGN RAILWAY STOCK UPON THE STOCK EXCHANGES OF PARIS AND IN THE DEPARTMENTS.

Issued 22nd May, 1858.

Art. 1.—The negotiation, upon the Stock Exchanges of Paris and in the departments, of stock belonging to railway Companies constructed outside of French territory, shall be controlled by the laws and regulations which are applicable to the negotiation of French stock of the same character, and, in addition, to the provisions set forth in the following Articles.

Art. 2.—These Companies must prove that they have been established in accordance with the laws of the countries to which they belong.

For this purpose they shall deliver to the minister of finance and to the *chambre syndicale des agents de change*, exemplified copies of :—

1. The public charter under which they have been formed, and which has authorised them, whether by grant or otherwise, to construct one or more lines of railway.
2. Their statutes and bye-laws, and, generally, all the documents which control their operations.

Art. 3.—The Companies are bound to prove that their stock, as well as their bonds, if any such have been issued, are officially quoted in the countries to which the railways belong.

Art. 4.—The shares shall not be of less than .500 fs. All that have been issued should be paid up to the extent of at least seven-tenths of their nominal value. (Modified by the decree of 16th August, 1859.)

They shall not be included in the official part of the authentic list of the French Stock Exchanges unless they have been sufficiently negotiated in France to establish a market price.

Art. 5.—Their bonds may be negotiated and quoted in France when the capital of the Company, or that part of the capital which is represented in stock, shall have been fully paid,

and when the issue in France of these bonds shall have been authorised by the ministers of finance, of agriculture, of commerce, and of public works.

GENERAL PROVISIONS.

Art. 6.—Stockbrokers are forbidden to assist in the negotiation of foreign securities before they have been accepted for the purpose of negotiation by the *chambre syndicale des agents de change*.

It is also forbidden to publish either the market rate of these securities in France, or the advertisement that subscriptions are open in France for foreign stock or bonds, before the same shall have been accepted, as provided in Art. 6.

Art. 7.—Nothing in this Act shall be in derogation of any permissions that may have been accorded prior to the promulgation of the present decree.

Decree of 16th December, 1859.

Art. 4 of the decree of the 22nd May, 1858, concerning the negotiation and quotation of foreign stock, is hereby amended as follows :—The stock shall not be of a less nominal value than 500 fs.; all the stock that has been issued must be paid up to three-fifths of its nominal value. This amendment shall not repeal such other clauses of the said Art. 4 as are consistent with the same.

LAW RELATING TO STOLEN OR LOST SECURITIES PAYABLE TO BEARER.

15th June, 1872.

Art. 1.—The owner of securities payable to bearer, who is deprived of the same by any means whatever, may be indemnified against his loss to the extent and under the circumstances prescribed by the present law.

Art. 2.—The owner must cause to be served by a *huissier* upon the establishment which has issued the security in question, a notice setting out the quantity, nature, nominal

value and number of the lost securities, and, if necessary, the series to which they belonged.

He should also, as clearly as possible, explain—

1. The time when, the place where, and the manner in which he became proprietor of the lost security ;
2. The time when, and place where he received the last interest or dividend ;
3. The circumstances under which the loss arose.

The same document must select a domicile in the commune in which the principal place of business of the establishment which has issued the security is situated.

The above notice shall have the effect of an *opposition* against the payment either of the capital or of the interest or dividends due or to become due.

Art. 3.—When one year has expired since the service of the *opposition* without its being contested or cancelled, and when, during such interval, two terms at least of interest or dividends have been distributed, the opposing party may apply to the president of the Civil Tribunal of the place of his domicile, to obtain an order authorising him to receive the interest or dividends due or to become due in their order, and even the principal affected by the *opposition*, in case the said principal is or becomes due and payable.

Art. 4.—If the president grants the order, the party who has served the *opposition* must, in order to receive the interest or dividends, furnish a solvent person as security to the extent of the interest payable, and in addition, for double the amount of the last interest due. After the expiration of two years from the date of the order, if the *opposition* has not been contested, the person who has become bound as surety shall of full right be discharged.

If the opposing party will not or cannot provide the necessary security, he may, upon production of the order authorising the same, require the Company to deposit in the *Caisse des Depots et Consignations* the amount of interest or dividends due, and as they become due. After the expiration of two years from the date of the order, if the *opposition* has not been contested, the opposing party may withdraw from the *Caisse des Depots et Consignations* the sums deposited therein, and freely receive the interest and dividends payable in the future as they become payable.

Art. 5.—If the principal affected by the *opposition* is

payable, the party stopping payment may receive the amount upon furnishing security. He can, if he prefer it, require the Company to deposit the amount of such principal in the *Caisse des Depots et Consignations*.

Ten years after maturity, and five years at least after the order, if the *opposition* has not been contested, the surety shall be discharged; and if a deposit has taken place, the party stopping payment may draw from the *Caisse des Depots et Consignations* the sums to which such *opposition* related.

Art. 6.—The surety, to be provided pursuant to the provisions of the preceding Articles, shall justify as in commercial cases. Should difficulties arise, the president of the Tribunal of the domicile of the establishment which has issued the securities in reference to which *opposition* has been served, shall adjudicate thereon *en referé*.

The attaching party may, at his option, deposit security instead of providing a surety; such security must consist of *titres de rente sur l'Etat*. It will be returned to him at the expiration of the periods fixed for the discharge of the surety.

Art. 7.—In case the order mentioned in Art. 3 is refused, the attaching party may apply by way of petition to the Civil Tribunal of his domicile, which shall give its decision after having heard the *Ministère Public*. The judgment obtained from the said tribunal shall produce the same effect as the order of authorisation.

Art. 8.—In case what has been lost consist of coupons payable to bearer, and detached from the security, if the *opposition* has not been contested, the opposing party may, after three years, calculated from maturity and from the service of the *opposition*, claim the amount of the said coupons from the establishment which has issued the same, without being obliged to obtain a special order for the purpose.

Art. 9.—The payments made to the attaching party, pursuant to the above rules, discharge the establishment as regards all third parties who may subsequently present themselves. A third party, to whose prejudice such payments may have been made, preserves only a personal action against the individual who may have lodged an *opposition* without proper cause.

Art. 10.—If, before the "establishment" has been discharged, a third party should appear presenting the securities,

payment of which has been stopped, the said establishment shall provisionally retain such securities and give a receipt to such third party; it shall also give notice to the attaching party, by registered letter, of the presentation of the security, and mention the name and address of the person who has presented the same. The effect of the *opposition* shall then remain suspended until all questions have been decided by the Courts between the third party and the party who has stopped the payment.

Art. 11.—An opposing party who desires to prevent the negotiation or transfer of securities of which he has been deprived or dispossessed, should cause a *huissier* to serve upon the syndicate of *agents de change* of Paris, an *opposition*, together with the particulars prescribed by Art. 2 of the present law; the said notice should contain a request to have the numbers of the securities advertised.

Such publication should take place within 24 hours at latest, and should be made by and upon the responsibility of the syndicate of the *agents de change* of Paris, in a daily bulletin, established and published in the forms and under the conditions determined by a *règlement d'administration publique*.

The same *règlement* shall fix the amount of the annual sum payable by the party stopping payment for expenses of advertising. Such annual payment must be liquidated in advance at the office of the *chambre syndicale*, in default of which the notice of *opposition* shall not be received, or the publication shall not be continued after the expiration of the year for which the requisite amount shall not have been paid.

Art. 12.—Every negotiation or transfer subsequent to the date upon which the bulletin arrived, or should have arrived, by means of the post in the place in which it was made, shall be void against the party who has stopped the payment thereof, without prejudice to the rights of the third party against his vendor, and against the stockbroker through whom the negotiation took place. The third party may also, in the case provided in the preceding Article, contest the *opposition* if illegally or irregularly made.

With the exception of cases in which fraud can be proved, *agents de change* shall not be held responsible for negotiations made through their agency, unless notice of the *oppositions* shall have been personally served upon them, or have been

published in the bulletin under the direction of the *chambre syndicale*.

Art. 13.—*Agents de change* must enter in their books the numbers of the securities which they buy or sell.

They must mention, upon the *bordereaux d'achats*, the numbers delivered. A *règlement d'administration publique* shall fix the rate of remuneration which shall be allowed to the *agent de change* for such inscription of numbers.

Art. 14.—Negotiations or transfers of securities previous to the publication of the *opposition* are still subject to Art. 2,279 and 2,280 of the Civil Code.

Art. 15.—When 10 years have elapsed since the date of the order obtained by the opposing party, pursuant to Art. 3, and where, during the same period of time, the *opposition* has been published without any third person presenting himself to claim the interest or dividends, the party who has lodged *opposition* may require the establishment which has issued the security to hand him a similar security in lieu of the first. Such security shall bear the same number as the original, with a note that it is delivered as a duplicate.

The document delivered as a duplicate shall confer the same rights as the original security, and shall be negotiable under the same conditions.

The period during which the establishment may not have distributed dividends or interest shall not be reckoned in the above period.

Pursuant to the present Article, the original security shall be forfeited, and a third person presenting the same, after the delivery of the new security to the opposing party, can only bring a personal action against the latter in case the *opposition* has been illegally made.

The opposing party, upon claiming a duplicate from the establishment, must defray the expenses occasioned thereby. He must also guarantee, by a deposit or by a surety, that the number of the forfeited security shall be published during ten years, with a special note, in the daily bulletin.

Art. 16.—The provisions of the present Law are applicable to securities payable to bearer, issued by the departments, the communes, and public establishments, but they are not applicable to notes of the Bank of France, nor to notes of the same nature issued by legally authorised establishments, nor

to *Rentes* or other securities to bearer issued by the State, which shall continue to be governed by the laws, decrees, and regulations now in force.

Nevertheless, the security required by the *administration des finances* for the delivery of duplicates of lost, stolen, or destroyed securities, shall be restored if, during the twenty years following, no claim on behalf of third parties has been made, either for arrears of interest or for principal. The Treasury shall be finally discharged towards the holder of the original securities, without prejudice to the personal right of action of such holder against the party who may obtain a duplicate.

LAW ON THE MORTGAGE OF SHIPS.

10th December, 1874.

Art. 1.—Ships may be mortgaged, but only by agreement of the parties.

Art. 2.—A maritime mortgage must be in writing. It may be *sous seing privé*. A mortgage *sous seing privé* is subject to a tax of only two francs for registration (*inscription*); but the *ad valorem* tax may be subsequently exacted in cases in which *actes sous seing privé* are subjected thereto, in conformity with the laws regulating costs (*enrégistrement*).

Art. 3.—A vessel cannot be mortgaged, in whole or in part, except by the owner, or his attorney acting under a special power therefor.

Art. 4.—A mortgage upon a vessel, or a portion of a vessel, extends, unless specially agreed otherwise, to the hull, rigging, equipment, machinery, and other appurtenances.

Art. 5.—A ship may be mortgaged while in course of construction. In this case the mortgage must be preceded by a declaration made in the office of the receiver of customs, at the place where the ship is in course of construction. Such declaration shall specify the length of the hull of the vessel, and approximately its other dimensions, as well as its proposed tonnage; it shall also name the dock in which the vessel is being constructed.

Art. 6.—The mortgage shall be published by registration, upon a special register kept by the receiver of customs at

the place where the vessel is in course of construction, or at that where it is entered ; if an *acte de francisation* has already been obtained, the fact of registration must be endorsed thereon by the receiver of customs. In any case the registration shall, in addition, be certified by him immediately and upon the same date, upon the mortgage, or the certified copy thereof which shall have been produced to him.

Art. 7.—Any owner of a vessel built in France, who asks to have it admitted to *francisation*, is obliged to join to the documents required for the purpose, a statement of all entries made upon the register in relation to the vessel in course of construction, or a certificate that none exist. Entries that have not been cancelled must be recorded in the order of their respective dates by the receiver of customs at the place, of his own motion, in the *acte de francisation*, as well as upon the register of the place of *francisation*, if that place is other than that where the ship was built.

If the vessel changes its port of entry, uncanceled mortgages must be recorded, of his own motion, by the receiver of customs, of the new port in which it is registered, upon his register, together with their respective dates.

Art. 8.—In order to effect registration, one of the originals of the mortgage must be presented to the office of the receiver of customs, where it shall remain deposited, if it is *sous seing privé* or *reçu en brevet*, or a copy. Two schedules shall be annexed thereto, signed by the party registering, one of which may form part of the deed produced. The schedule shall contain :—First, the surnames, Christian names, and domicils of the mortgagor or mortgagee, and their profession, if they have one ; second, the debt, and the nature of the document ; third, the amount of the debt covered by the deed ; fourth, the agreement relating to the interests and repayment ; fifth, name and description of the vessel mortgaged, the date of the *acte de francisation* or of the declaration of its being placed in construction ; and sixth, the appointment of domicile by the mortgagee in the place where the receiver of customs resides.

Art. 9.—The receiver of customs shall record the contents of the statement, and shall deliver to the mortgagor a copy of the *titre* if it is *authentique*, and one of the statements, at the foot of which he shall certify that he has recorded the same.

Art. 10.—If there are two or more mortgages upon the same portion of a ship, their order shall be determined by the order of registration. Mortgages registered upon the same day shall be deemed to be registered at the same hour, in spite of a possible difference in the hour of registration.

Art. 11.—Registration is valid for three years from the day of its date. It ceases to be valid unless it has been renewed before the expiration of this time upon the register held in the custom house office, and unless it is renewed upon the *acte de francisation* upon the return of the ship to the port where it is entered.

Art 12.—If the mortgage deed is made out to order, its negotiation by endorsement carries with it all the rights under it.

Art. 13.—Registration guarantees payment of two years of interest, in addition to the year of registration, as well as payment of the capital.

Art. 14.—Registration may be cancelled, either by consent of the parties in interest who have the right to consent thereto, or by virtue of a judgment in last resort, or rendered with the effect of a final judgment.

Art. 15.—If there is no judgment, the total or partial cancellation of registration cannot be effected by the custom house officer, except upon the deposit of an *acte authentique*, setting forth the consent to the cancellation, and given by the creditor or his assignee, with the justification of his rights as such. If the *acte* does no more than release the same, the *taxe proportionnelle* upon the mortgage deed shall not be payable.

If the mortgage deed is *sous seing privé*, or *reçu en brevet*, it shall be delivered to the receiver of customs, who thereupon shall mention therein the total or partial cancellation of the same. If the *acte de francisation* is delivered at the same time, or subsequently thereto, the receiver of customs is bound to mention therein the total or partial cancellation of the mortgage at the date thereof.

Art. 16.—The receiver of customs is bound to deliver to all those who demand it a certificate of the entries upon his register relating to any ship, or one stating that none exist thereupon.

Art. 17.—If the ship is lost or rendered unseaworthy, the rights of the mortgagees are valid against the articles saved or the proceeds thereof, so long as the mortgages have

not already matured. They are valid also, according to the order of registration, against the insurance which may have been made by the borrower upon the ship mortgaged. In the case provided for by the present Article, registration of a mortgage is equivalent to *opposition* to payment of indemnity.

Registered creditors or their assignees may, on the other hand, insure the ship as security for their claim. Insurers who may have insured such claim shall, upon payment thereof, be subrogated to the rights of the mortgagee.

Art. 18.—Mortgagees who have registered their mortgage upon a ship or a part of a ship, may follow the ship in the hands of whomsoever it may pass, according to the order of their registration. If the mortgage affects only a portion of the ship, the mortgagee cannot seize or sell the portion which is affected. However, if more than one-half of the ship is mortgaged, the mortgagee may, after seizure, sell the whole ship, if he cites to the sale the joint owners thereof. In every case of joint ownership, other than that which results from inheritance or the dissolution of a conjugal *communauté de biens*, mortgages, made before partition by one or more joint owners upon a portion of a ship, continue, in derogation of Art. 883 of the Civil Code, to exist after the partition. However, if the partition is made by suit in the forms determined by Art. 201, *et seq.*, of the Code of Commerce, the right of creditors who have mortgages upon a portion of a ship shall be limited to a preferential claim upon that part of the proceeds which are applicable to the interest mortgage.

Art. 19.—The purchaser of a ship, or a portion of a ship that has been mortgaged, who desires to secure himself from prosecution authorised by the preceding Article, is bound, before prosecution, or within 15 days therefrom, to serve upon all the creditors registered upon the *acte de francisation*, at the domicil chosen in the registrations:—

1. An extract of his deed, specifying in each copy sent out the date and the nature of the deed, the name of the seller, the name, description, and tonnage of the ship, and the liabilities which form part of the consideration.
2. A table in three columns, the first of which shall contain the dates of registration, the second the names of the creditors, the third the amounts of the debts registered.

Art. 20.—The purchaser shall state in the same *acte* that he is ready forthwith to pay the mortgage debts up to the amount of the price agreed upon, without distinction as to debts due or not due.

Art. 21.—Every creditor can demand the resale of a ship or a portion of a ship at auction, upon offering to add to the price already paid one-tenth thereof, and to give security for the payment of the price and costs.

Art. 22.—This demand for resale shall be signed by the creditor, and shall be served upon the purchaser within ten days from the notification. It shall contain a summons to appear before the Civil Tribunal of the place where the ship is at anchor, or if it is upon a voyage, of the place where it is entered, and show cause why the resale should be ordered.

Art. 23.—The resale at auction shall take place at the instance either of the creditor who shall demand it, or of the purchaser, according to the form established for sales at auction.

Art. 24.—Resale at auction shall not be allowed if the original sale has been by judicial decree.

Art. 25.—In case the creditors shall not have agreed amongst themselves within 15 days as to the distribution of the proceeds of the price offered in the notification, or those produced by the second sale, the creditors, who are privileged, mortgage and unsecured creditors, shall proceed according to the formalities established on the subject of seizure. In case of the distribution of the proceeds of a mortgaged ship, registration is equivalent to a lien in favour of the creditor who is registered; the creditor shall have one month in which to produce his papers, counting from the day upon which the summons shall have been served upon him.

Art. 26.—The proprietor who desires to reserve the right of mortgaging his ship while on a voyage, is bound to declare, before the departure of the ship, at the office of the receiver of customs of the place in which the ship is entered, the sum for which he desires to use this right, which sum is inscribed upon the register of the receiver of customs, and upon the *acte de francisation* following the record of mortgages already existing.

Mortgages that are made in the course of the voyage shall be stated upon the *acte de francisation* in France and in the colonies of France by the receiver of customs; abroad by the

French consul, or in default of him, by a public officer of the place of contract. Mention shall be made by one or the other upon a special register, which shall be preserved, in order that recourse may be had to it in case of the loss of the *acte de francisation* by shipwreck or otherwise before the arrival of the ship. They rank from the day that they are inscribed upon the *acte de francisation*. The record made by virtue of paragraph 2 of the present Article cannot be suppressed, except upon the completion of the voyage, and upon presentation of the *acte de francisation*.

Art. 27.—Paragraph 9 of Art. 191, and 7 of Art. 192, of the Code of Commerce, are hereby repealed.

Art. 191 of the same Code shall terminate with the following provision :—

Mortgage creditors, who have mortgages upon a ship, shall come in their order of registration after the creditors who have a *privilege*.

Art. 28.—Art. 233 of the Code of Commerce is modified as follows :—

If the vessel be freighted with the consent of the owners, and one or more of them refuse to contribute their share of the expenses necessary in order to ship the same, the captain, 24 hours after having served a judicial demand for the said contribution upon those refusing to pay the same, may borrow upon mortgage for their account and upon their portion of the ship, if he obtains from the Court authority so to do.

Art. 29.—Owners of ships of 20 tons and above may mortgage within the provisions of the present law.

Art. 30.—The tariff of duties to be paid to the *employés* of the custom house, and the special security to be imposed upon them by virtue of the written contracts to which the execution of this law shall give rise, shall be determined by a decree rendered under the form of a *règlement d'administration publique*. The responsibility of the comptroller of the custom house for the acts of his agents does not apply to the duties imposed upon the receivers by the preceding provisions. This law shall be executory from the 1st May, 1875.

LAW UPON PATENTS OF INVENTION.

Issued the 5th July, 1844.

TITLE I.

GENERAL PROVISIONS.

Art. 1.—Every new discovery or invention, in all kinds of industry, confers upon its author, subject to the conditions and for the periods hereafter determined, the exclusive right to work for his benefit the said discovery or invention. This right is evidenced by documents delivered by the Government under the name of *brevets d'invention* (letters patent).

Art. 2.—The following are considered as inventions or new discoveries :—

The invention of new industrial products.

The invention of new means, or a new application of known means for obtaining a result or an industrial product.

Art. 3.—The following are not capable of being patented :—

1. Medical compositions and medicines of every kind. These remain subject to special laws and regulations, and specially to the Decree of 18th August, 1810, relating to secret remedies.
2. Plans and combinations of credit or finance.

Art. 4.—Patents shall be valid for five, ten, or fifteen years. The following fees shall be paid for every patent taken :—

| | |
|--------------------------------------|---------|
| For a patent of five years | 500 fs. |
| „ ten „ | 1,000 „ |
| „ fifteen „ | 1,500 „ |

This fee shall be payable in annual sums of 100 fs. The patent shall be forfeited if the patentee allows a term to pass without payment thereof.

TITLE II.

FORMALITIES ATTENDING THE TAKING OF PATENTS.

SECTION I.

THE APPLICATION.

Art. 5.—In order to obtain a patent, the applicant must deposit, under seal, at the office of the secretary of the *Préfecture* in the department in which he is domiciled, or in any other department after having elected domicile therein, the following, viz. :—

1. His petition to the minister of agriculture and commerce.
2. A description of the discovery, invention, or application that forms the object of the patent.
3. Drawings or samples necessary for the elucidation of the description; and
4. A schedule of the documents deposited.

Art. 6.—The application must be limited to a single principal object, the details constituting the same, and the applications thereof which may have been indicated. It shall mention the term that the petitioners have asked for, within the limits prescribed by Art. 4, and shall contain no conditions, restrictions, or reserves.

It shall designate a title, consisting of a summary and precise description of the object of the invention. Such description must not be written in a foreign language, and must not contain alterations or additions. Words struck out must be counted and stated, and the pages and marginal notes initialed.

Such document must not contain any other denomination of weights and measures than those specified in the Tables annexed to the Law of the 4th July, 1837.

Drawings must be traced in ink, according to the metrical scale.

Duplicates of the description and of the drawings must be joined to the petition.

All the documents must be signed by the petitioner, or by

his attorney, in fact, whose power must be annexed to the petition.

Art. 7.—No deposit shall be received unless accompanied by a receipt acknowledging payment of the sum of 100 fs., on account of the whole fee due for the patent.

A certificate, drawn up free of expense by the Secretary-General of the *Préfecture*, upon a register for that purpose, and signed by the petitioner, shall be evidence of every deposit, and shall state the day and hour of the same. A copy of such certificate shall be handed to the depositor upon payment of the stamp duty.

Art. 8.—The patent shall begin to run from the day of the deposit prescribed by Art. 5.

SECTION II.

ON THE DELIVERY OF PATENTS.

Art. 9.—Upon the deposit of the application, and five days from the date of the deposit, the *Préfets* shall forward the papers, under the seal of the inventor, to the Minister of Agriculture and Commerce, and join thereto a certified copy of the certificate of registration, the receipt proving the payment of the tax, and, if there be one, the power of attorney mentioned in Art. 6.

Art. 10.—Upon the arrival of the papers at the Minister of Agriculture and Commerce, they shall be opened, and the demand shall be registered, and the patents shall be issued in the order of the receipt of the petitions.

Art. 11.—Patents, the petitions for which have been properly made, shall be delivered, without previous examination, at the risk and peril of the petitioner, and without guarantee either of the existence, novelty, or merit of the invention, or of the fidelity or exactness of the description.

A decree of the *Ministère*, proving the regularity of the demand, shall be delivered to the petitioner, and shall constitute his patent.

To such decree shall be annexed a certified duplicate of the description and of the drawings mentioned in Art. 6, after they have been compared with the originals and declared to be in conformity therewith.

The first copy of patents shall be delivered without cost. For any further copy required by the patentee or his representatives, a fee of 25 fs. is chargeable. Drawings shall be at the expense of the applicant.

Art. 12.—All petitions in which the formalities prescribed by Nos. 2 and 3 of Art. 5, and by Art. 6, have not been observed, shall be rejected. Half the amount paid shall remain the property of the Treasury, but the petitioner may receive back the whole of the amount if he repeats his demand for a patent within three months from the day upon which he received notice of the rejection of his prior petition.

Art. 13.—In cases when, by the application of Art. 3, patents cannot be granted, the tax shall be returned.

Art. 14.—An ordinance in the *Bulletin des Lois* shall publish every three months all the patents delivered within that time.

Art. 15.—The term of a patent can only be extended by a special law.

SECTION III.

OF CERTIFICATES OF ADDITION.

Art. 16.—The patentee or his representatives have the right, during the whole term of the patent, to register changes, improvements, or additions thereto, upon fulfilling the formalities prescribed by Arts. 5, 6 and 7, as regards registration.

Such changes, improvements, or additions shall be evidenced by certificates, delivered in the same form as the principal patent, and shall have, from the respective dates of petition and delivery, the same effects as the principal patent to which they pertain.

A fee of 20 fs. shall be paid for every petition for a certificate of addition.

Certificates of addition taken out by one of several parties who have an interest in the patent shall benefit the remainder.

Art. 17.—Any patentee who, for a change, improvement, or addition, desires to take out a principal patent of five, ten, or fifteen years, instead of a certificate of addition which expires with the original patent, must fulfil the

formalities prescribed by Arts. 5, 6 and 7, and pay the tax mentioned in Art. 4.

Art. 18.—No person other than the patentee, or his representatives acting as above mentioned, can, during the space of one year, legally take out a patent for a change, improvement, or addition to the invention constituting the object of the prior patent. Nevertheless, any person who desires to take out a patent for a change, addition, or improvement to a discovery already patented, can, during the said year, send in a petition, which shall be transmitted to, and shall remain deposited under seal with, the Minister of Agriculture and Commerce. When the year has expired, the seals shall be broken and the patent delivered.

Nevertheless, the principal patentee shall have a preference as to the changes, improvements, and additions for which he may himself, during the year, have demanded a certificate of addition or a patent.

Art. 19.—No person who has taken out a patent for a discovery, invention, or application attaching to the object of another patent, shall have any right to work the invention already patented; and reciprocally, the proprietor of the original patent may not work the invention which is the object of such subsequent patent.

SECTION IV.

OF THE ASSIGNMENT OF PATENTS.

Art. 20.—A patentee may assign the whole or a part of his patent.

The total or partial assignment of a patent, whether gratuitous or for a valuable consideration, must be by notarial deed, and upon payment of the entire amount of the tax prescribed by Art. 4.

No assignment shall be legal as regards third parties until it has been registered at the secretary's office of the *Préfecture* of the departmen in which the deed of assignment shall have been executed.

Assignments, and all other deeds relating to the same, shall be registered upon the filing of an authenticated copy of the assignments. A copy of all certificates of registration involved, together with a copy of the assignment above

mentioned, shall be forwarded by the *Préfets* to the Minister of Agriculture and Commerce within five days from the date of the registration.

Art. 21.—A register shall be provided at the Ministry of Agriculture and Commerce, upon which shall be inscribed every assignment of every patent, and every three months an ordinance shall publish, in the form provided by Art. 14, the assignments that have been registered during the previous quarter.

Art. 22.—The assignee of a patent, and those who may have acquired from a patentee or his representatives the right to work a discovery or invention, are entitled to the benefit of all certificates of addition which may be subsequently delivered to the patentee or his representatives. Reciprocally, the patentee or his representatives shall benefit by the certificates of addition which may be subsequently delivered to assignees.

All parties who have a right to certificates of addition may obtain delivery of a copy thereof at the Ministry of Agriculture and Commerce, upon payment of the sum of 20 fs.

SECTION V.

OF THE COMMUNICATION AND PUBLICATION OF DESCRIPTIONS AND DRAWINGS OF PATENTS.

Art. 23.—Descriptions and drawings, samples, and models of patents delivered, shall, until the expiration of such patents, remain deposited with the Minister of Agriculture and Commerce, where they may be referred to by the public free of charge.

Any person may obtain, at his expense, a copy of such descriptions and drawings upon compliance with the formalities prescribed in the *règlement* made as provided by Art. 50.

Art. 24.—After the payment of the second annual payment, the descriptions and drawings shall be published either in full or in part.

At the commencement of each year a catalogue, containing the titles of patents delivered during the preceding year, shall also be published.

Art. 25.—The collection of descriptions and drawings,

and the catalogue published pursuant to the preceding Article, shall be deposited with the Minister of Agriculture and Commerce, and with the Secretary of the *Préfecture* of each department, where they can be consulted free of expense.

Art. 26.—At the expiration of the patents, the original descriptions and drawings shall be deposited with the *Conservatoire des Arts et Métiers*.

TITLE III.

OF THE RIGHTS OF FOREIGNERS.

Art. 27.—Foreigners may obtain patents of invention in France.

Art. 28.—The formalities and conditions prescribed by the present law shall be applicable to patents demanded or delivered in execution of the preceding Article.

Art. 29.—The author of an invention or discovery already patented abroad may obtain a patent in France, but the duration of such latter patent cannot exceed that of the patent delivered abroad.

TITLE IV.

OF REPEAL AND FORFEITURE, AND OF ACTIONS RELATING THERETO.

SECTION I.

OF REPEAL AND FORFEITURE.

Art. 30.—Patents delivered in the following cases are void and of no effect:—

1. If the discovery, invention or application is not new;
2. If, pursuant to the terms of Art. 3, the discovery, invention or application is not susceptible of being patented;
3. If the patents relate to principles, methods, systems, discoveries, or theoretical or purely scientific conceptions, the commercial applications of which are not described therein;
4. If the discovery, invention or application is considered contrary to public policy and good manners,

and to existing laws—without prejudice in such case, and in that provided in the preceding paragraph, to the penalties which may be incurred for the manufacture or the sale of prohibited objects ;

5. If the title under which the patent has been demanded fraudulently, indicates an object other than the true object of the invention ;
6. If the description joined to the patent is not sufficient for the carrying out of the invention, or if it does not indicate in an explicit and complete manner the true means employed by the inventor ;
7. If the patent has been obtained contrary to the provisions of Art. 18.

Certificates of changes, improvements or additions, which do not relate to the principal patent, shall also be void and of no effect.

Art. 31.—Any discovery, invention, or application which, in France or abroad, and previously to the date of the deposit of the demand, has received sufficient publicity to enable it to be worked, shall not be reputed to be new.

Art. 32.—The following shall be deprived of all their rights :—

1. The patentee who has not paid his annual payment before the commencement of each of the years of the duration of his patent ;
2. The patentee who has not worked his discovery or invention in France within a period of two years, dating from the day of the signature of the patent ; or who has ceased during the space of two consecutive years to work the patent—unless, in either case, he can justify his inaction ;
3. The patentee who has introduced into France objects manufactured abroad, and similar to those protected by his patent. Nevertheless, the Minister of Agriculture and Commerce, and of Public Works, can authorise the introduction of the following :—
 1. Models of machines.
 2. Objects manufactured abroad, destined for public exhibitions, or for trials to be made with the consent of the Government. (Thus modified by the Law of the 31st May, 1856.)

Art. 33.—Any person who, in advertisements, prospectuses, signs, publications, marks or stamps, describes himself as a patentee, without possessing a patent delivered pursuant to law, or after the expiration of a prior patent; or who, being a patentee, makes mention of his titles without adding the words, “*Sans garantie du Gouvernement*,” shall incur a penalty of from 50 fs. to 1,000 fs., and in case of repetition the penalty may be doubled.

SECTION II.

OF ACTIONS FOR REPEAL OR FORFEITURE.

Art. 34.—All parties interested can institute proceedings for the repeal or forfeiture of a patent. Such actions, as well as all contests relative to property in patents, must be brought before the Civil Court of First Resort.

Art. 35.—If the action is brought simultaneously against the proprietor of the patent and against one or several assignees, such action must be brought in the Court of the domicile of the owner of the patent.

Art. 36.—The proceedings must be commenced and carried through in the form prescribed for *matières sommaires*, by Art. 405 and the Code of Civil Procedure. Notice thereof shall be given to the *Procureur* of the Republic.

Art. 37.—In all proceedings to obtain the repeal or forfeiture of a patent, the *Ministère Public* may intervene and demand that a judgment for the same be rendered. It may even proceed immediately in a special action to obtain a judgment for the repeal of a patent in the cases provided by Nos. 2, 4 and 5 of Art. 30.

Art. 38.—In the cases provided by Art. 37, all parties interested in the patent, whose muniments of title have been registered at the *Ministère d'Agriculture et Commerce* pursuant to Art. 21, must be cited.

Art 39.—When a final judgment for the absolute repeal or forfeiture of a patent has been rendered, notice thereof shall be given to the *Ministère d'Agriculture et Commerce*, and the repeal or the forfeiture shall be published in the form prescribed by Art. 14, relating to the obtaining of patents.

TITLE V.
OF INFRINGEMENT—PROCEEDINGS AND PENALTIES RELATING
THERETO.

Art. 40.—Any violation of the rights of the patentee, either by the manufacture of articles, or by the employment of means patented, constitutes the *misdemeanour* of infringement. Such offence is punished by a fine of from 100 fs. to 2,000 fs.

Art. 41.—Parties who have knowingly concealed, sold, or exposed for sale, or introduced upon French territory one or more infringed articles, incur the same penalties as infringers.

Art. 42.—The penalties provided by the present law cannot be cumulated.

The heaviest penalty alone may be imposed for all acts anterior to the commencement of proceedings.

Art. 43.—In case the offence is repeated, a penalty of imprisonment for a term of from one to six months shall be pronounced, over and above the fine provided by Arts. 40 and 41.

An offence is deemed to have been repeated when the defendant has been convicted of the same offence within the previous five years.

Imprisonment for from one to six months may also be inflicted if the infringer be a workman or an *employé* who has worked in the factory or in the establishment of the patentee, or if the infringer has associated himself with such workman or *employé* of the patentee, or acquired knowledge from the latter of the details comprised in the patent. In the latter case, the workman or *employé* can be prosecuted as an accomplice.

Art. 44.—Art. 463 of the Penal Code may be applied in the cases covered by the preceding provisions.

Art. 45.—Proceedings in the *Tribunal Correctionnel*, to obtain the application of the penalties above mentioned, cannot be instituted by the *Ministère Public* except upon the complaint of the injured party.

Art. 46.—The *Tribunal Correctionnel*, if it has once obtained jurisdiction of an action for infringement, may decide upon the defences put forward by the defendant, either as

regards the appeal or forfeiture of the patent, or upon questions relating to property in the said patent.

Art. 47.—The owners of the patent can, by virtue of an order of the Court of First Resort, proceed by *huissier* to designate and describe in detail, with or without seizure, the objects which they assert are infringed. The order may be made upon a simple petition, or upon the production of the patent. It shall name, if necessary, an expert to assist the *huissier* in his description.

If an application is made for an order of seizure, the said order may require the plaintiff to furnish security, and to pay the money into the *Caisse de Consignations* before proceeding further.

A foreign patentee who has recourse to seizure must always furnish security.

A copy of the Articles described or seized, and of the deed proving the deposit of security when such security is required, shall be served upon the defendant, or the proceedings shall be void, and the *huissier* responsible for damages.

Art. 48.—In case the complainant fails to prosecute, either in the Civil Courts or in the *Tribunal Correctionnel*, within eight days from the seizure—allowing one day for every three *myriamètres* of distance between the place in which the articles seized or described are situated and the domicile of the defendant—whether for infringing or for concealing, introducing, or selling the infringing articles, such seizure or description shall be void by law, without prejudice to the damages which may be claimed in the manner prescribed by Art. 36.

Art. 49.—A judgment for the confiscation of articles admitted to be infringements, and, if there be any, of instruments or utensils destined specially to the manufacture thereof, shall, even in the case of acquittal, be rendered against the defendant, whether for infringement, or for concealing, introducing, or selling the infringing articles. The articles confiscated shall be handed to the proprietor of the patent, without prejudice to an action for further damages, and to the publication of the judgment, when so ordered.

TITLE VI.

SPECIAL AND PROVISIONAL MEASURES.

Art. 50.—Royal ordinances, having the effect of *règlements d'administration publique*, shall provide the necessary measures for the execution of the present law.

This law shall not take effect until three months after its promulgation.

Art. 51.—Ordinances rendered in the same form shall control the application of the present law in the colonies, with the modifications that may be considered necessary.

Art. 52.—The following laws shall be repealed from the date upon which the present law becomes executory, viz.:—

The Laws of the 7th of January and 25th of May, 1791; that of the 20th September, 1792; the *arrêté* of the 17th *Vendémiaire*, year VII.: the *arrêté* of the 5th *Vendémiaire*, year IX.; the *Décrets* of the 25th November, 1806, and 25th January, 1807, and all provisions previous to the present law relating to patents of invention, of importation, and of improvements.

Art. 53.—Patents of invention, of importation, and of improvements, actually in existence, delivered pursuant to laws anterior to the present law, or abrogated by royal ordinance, shall be valid during the whole time which may have been assigned to them for their duration.

Art. 54.—Any proceedings which may have been commenced before the promulgation of the present law shall be carried to an end in conformity with previous laws. Any action for either the infringement, repeal, or forfeiture of a patent not yet commenced, must be made pursuant to the provisions of the present law, although such proceedings may relate to patents previously delivered.

TRADE MARKS.*

LAW UPON MARKS USED IN TRADE AND COMMERCE.

Passed 23rd June, 1857.

TITLE I.

OF THE RIGHT OF PROPERTY IN TRADE MARKS.

Art. 1.—Trade or commercial marks are not compulsory, but decrees rendered in the form of *règlements d'admin-*

* See the Commentary on this Law, p. 285, 288.

istration publique may, by way of exception, declare certain marks compulsory for certain specified articles. Trade marks include the following:—names of a distinctive character, expressions, emblems, imprints, stamps, seals, vignettes, reliefs, letters, numbers, envelopes, and every other sign employed to distinguish the product of a manufactory or the articles of a trade.

Art. 2.—No person may claim, at law, the exclusive property in a trade mark unless two copies thereof have been registered at the *greffe* of the Tribunal of Commerce of his domicile.

Art. 3.—The registration is effective for a period of 15 years, but property in a trade mark may be secured for a further term of 15 years by means of a new registration.

Art. 4.—A fee of one franc shall be paid for the drawing up of the certificate of registration of each mark, and for the copy thereof, not inclusive of the stamp and registration fees.

TITLE. II.

PROVISIONS RELATING TO FOREIGNERS.

Art. 5.—Foreigners who have commercial establishments in France are entitled to the benefit of the present law for the articles dealt in by them, upon compliance with the formalities prescribed herein.

Art 6.—Foreigners and French subjects, whose establishments are situated out of France, are equally entitled to the benefits of the present law for the articles dealt in by them, if, in the countries where they are situated, diplomatic conventions have established reciprocity as regards French trade marks. In this case the deposit of foreign marks must be made at the *greffe* of the Tribunal of Commerce of the department of the Seine.

TITLE III.

PENALTIES.

Art. 7.—The following are liable to a fine of from 50 fs. to 3,000 fs., and to imprisonment for from three months to three years, or to one of such penalties:—

1. Those who have counterfeited, or made use of a counterfeit trade mark;

2. Those who have fraudulently affixed upon their goods, or the articles dealt in by them, a mark belonging to another person ;
3. Those who have knowingly sold or exposed for sale one or more articles bearing a counterfeit mark, or articles to which trade marks have been fraudulently affixed.

Art. 8.—The following are liable to a fine of from 50 fs. to 2,000 fs., and to imprisonment for from one month to one year, or to one of such penalties :—

1. Those who, without having counterfeited a mark. have fraudulently imitated it in a manner liable to deceive a purchaser, or who have made use of a mark fraudulently imitated ;
2. Those who have made use of a mark calculated to deceive a purchaser in relation to the nature of the article ;
3. Those who have knowingly sold or exposed for sale one or more articles bearing a mark fraudulently imitated, or indications calculated to deceive a purchaser in relation to the nature of the goods.

Art. 9.—The following are liable to a fine of from 50 fs. to 1,000 fs., or to imprisonment for from fifteen days to six months, or to one of such penalties only :—

1. Those who have failed to put upon their goods a mark declared to be obligatory ;
2. Those who have sold or exposed for sale one or more articles which do not bear a mark declared obligatory in respect to the same ;
3. Those who have violated the decree rendered in execution of Art. 1 of the present law.

Art. 10.—The penalties provided by the present law cannot be cumulative.

The highest penalty only may be inflicted for all acts anterior to the commencement of proceedings.

Art. 11.—The penalties prescribed by Arts. 7, 8, and 9 may be doubled in case of a new offence. A new offence is one of the same nature that has been committed within five years of a sentence passed for violation of this law.

Art. 12.—Art. 463 of the Penal Code may be applied to offences comprised in the present law.

Art. 13.—Offenders may, in addition, be deprived of the right of voting in the election to the tribunals, the Chambers of Commerce, the *Chambre Consultative des Arts et Manufactures*, and to the *Conseil des Prudhommes*, during a period which shall not exceed ten years.

The tribunal may order that the judgment be published in specified places, and that such judgment be inserted, wholly or in part, in specified newspapers, all at the expense of the defendant.

Art. 14.—The confiscation of goods, the marks upon which violate the provisions of Arts. 7 and 8, may, even in case of acquittal, be ordered by the tribunal, as well as that of instruments and tools that have specially served to commit the offence. The tribunal may order that the objects confiscated be handed to the proprietor of the violated mark, independently of heavier damages, in case such can be proved. It shall order in every case the destruction of marks recognised as violations of the provisions of Arts. 7 and 8.

Art. 15.—In the cases provided for by the first two paragraphs of Art. 9, the tribunal shall in all cases order that marks declared to be obligatory be affixed to the articles to which they apply. The tribunal may order the confiscation of the articles if the defendant has been convicted within the preceding five years of one of the offences provided for by the first two paragraphs of Art. 9.

TITLE IV.

JURISDICTION.

Art. 16.—Civil actions relating to trade-marks shall be brought before the Civil Courts, and shall be tried as summary proceedings.

In case the proceedings are commenced in the Criminal Court, if the defendant sets forth in his defence questions relating to the ownership of the mark, the *Tribunal de Police Correctionnelle* shall decide upon such defence.

Art. 17.—The proprietor of a trade-mark may commission any *huissier* to obtain a detailed description, with or without seizure, of the articles which he alleges to be marked to his prejudice, in violation of the provisions of the present

law, upon obtaining an order therefor from the president of the Civil tribunal of First Instance, or from the justice of the peace of the *canton*, in case there is no Tribunal in the place in which the articles to be described or to be seized are found. The order shall be made upon simple petition, and upon the presentation of the certificate of registration of the mark. The order shall name, in case of need, an expert to assist the *huissier* in his description.

When an application for an order of seizure is made, the judge may require the applicant to furnish security, which he shall be compelled to do before proceeding to seize.

A copy of the order, and of a document proving the deposit of the security, in case such is required, shall be served upon the parties in possession of the articles to be described or seized, in default of which the proceedings shall be void, and the *huissier* responsible in damages.

Art. 18.—In case the plaintiff fails to follow up his seizure, by proceeding in either a civil or a criminal Court within 15 days—allowing one day for every *myriamètre* of distance (1 *myriamètre* = 6 miles, 1 furlong, 28 poles) between the place in which the articles described or seized are found and the domicile of the party against whom the action is to be brought—the description or seizure shall be *ipso facto* void, and may give rise to an action for damages.

TITLE V.

GENERAL AND PROVISIONAL MEASURES.

Art. 19.—All foreign articles that bear either the trade mark or the name of a manufacturer residing in France, or the name or place of a French manufactory, are prohibited from entering France, from passing through France, or being warehoused there, and may be seized wherever found, either by the custom house, or upon the complaint of the *Ministère Public*, or of the injured party.

In case the seizure is made at the request of the custom house, a report of the seizure shall be made and forwarded to the *Ministère Public*.

The action provided for by Art. 18, whether at the instance of the *Ministère Public* or at that of the injured party

shall be brought within two months after seizure, or the seizure shall be void.

The provisions of Art. 14 are applicable to articles seized pursuant to the present Article.

Art. 20.—All the provisions of the present law are applicable to wines, brandies and other drinks, to cattle, grain, flour, and generally to all products of agriculture.

Art. 21.—All registrations of trade marks made at the *greffe* of the Tribunal of Commerce previous to the present law shall be effective for 15 years, dating from the period when the said law becomes executory.

Art. 22.—The present law shall not become executory until six months after its promulgation.

A *règlement de l'administration publique* shall determine the formalities to be fulfilled for the registration and publication of trade marks, and all other necessary measures for the execution of the law.

Existing provisions, not contradictory to the terms of the present law, shall remain in force.

LAW ESTABLISHING A STAMP OR SPECIAL MARK TO BE AFFIXED TO TRADE MARKS.

Art. 1.—The Government shall affix to every trade mark registered in conformity to the Law of 23rd June, 1857, upon the written application of the owner thereof, whether the said trade mark be marked upon labels, bands, or envelopes of paper or of metal, a special stamp for the purpose of guaranteeing the authenticity of the trade mark. The stamp may be affixed to the trade mark, even though it form part of the article itself, if the Government deem it capable of receiving the same.

Art. 2.—A fee, varying from one centime to one franc, shall be paid to the State for every stamp. If affixed upon the article itself, the fee shall not be less than five centimes or more than five francs.

Art. 3.—The amount of the fee shall be proportionate to the value of the article to which the trade mark is attached, and to the difficulty of affixing the stamp thereto.

A *règlement d'administration public* shall determine the

afore-mentioned proportion ; the metals upon which the stamp shall be applied ; the conditions under which the application shall be made and other measures executory of the present law.

Art. 4.—A sale by the owner of the trade mark of the article covered by the same at a higher price than that corresponding to the fee paid, shall be punishable for each offence by a penalty of 100 fs. to 5,000 fs. Such sales shall be denounced in every place open to the public by the officials authorised to report upon the subject of stamps and indirect taxes, and by post-office and custom house agents, in case of exportation. The agents shall have one-fourth of the penalty recovered. The facts attending the sale shall be set forth, and the matter subjected to the following jurisdiction :—1. As with respect to stamps when the stamp has been affixed to paper. 2. As with respect to indirect taxation, when a stamp has been used that leaves an impression.

Art. 5.—French consuls abroad are hereby authorised to draw up reports concerning the fraudulent use of trade marks, and to forward the same to the competent parties.

Art. 6.—Those parties who shall counterfeit or imitate the stamp established by this law, and those who shall make use of counterfeit or imitation stamps, shall be punished according to the provision of Art. 140 of the Penal Code, without prejudice to civil damages. Every other fraudulent use of stamps, or of labels, bands, envelopes, or impressions which may be covered thereby, shall be punished according to the provisions of Art. 142 of the said Code. Art. 463 of the Penal Code shall be applicable thereto.

Art. 7.—The stamp affixed by the State upon a trade mark shall form an integral part of the said mark. In case the State fails to prosecute, in France or abroad, the counterfeiting or the imitation of the said stamp, the owner of the mark may himself prosecute.

Art. 8.—The present law shall be applicable in the French Colonies and in Algeria.

Art. 9.—The provisions of other laws now in force bearing upon trade marks, commercial designations, patterns and models of manufacture, shall be available to aliens, if the jurisprudence of their country or international treaties secure reciprocal rights to French citizens.

PROPOSED LAW AS VOTED BY THE SENATE.

LAW RELATING TO COMMERCIAL PATTERNS AND MODELS.

TITLE I.

GENERAL PROVISIONS.

Art. 1.—The originator of a commercial design or model has the exclusive right, himself, his heirs, and his assigns, to be the user thereof, for the time and under the conditions hereinafter prescribed.

Art. 2.—All arrangements, dispositions, or combinations of lines or colours designed for the purpose of reproduction in manufacture, are termed commercial patterns.

Every work in relief, destined to be reproduced in manufacture as an article or separate part of an article, is termed a commercial model.

Art. 3.—Works which are essentially artistic are not included in these categories.

These works shall be protected by the law of the 19th July, 1793, and by the other laws relating to artistic property.

Art. 4.—The time of exclusive right of user, guaranteed by Art. 1, shall not exceed 15 years.

If this right has been claimed for a less time, the term can be extended to the expiration of the maximum upon the payment of the fees specified in Art. 16, and upon the condition that a declaration be made at the place of registration at least three months beforehand.

TITLE II.

CONCERNING THE DEPOSIT OF FEES, THE COMMUNICATION AND PUBLICATION OF PATTERNS AND MODELS.

Art. 5.—Whosoever shall desire to claim the exclusive right to be the user of a commercial pattern or model, shall deposit a specimen thereof with the clerk of the Tribunal of Commerce.

The date of the deposit shall constitute the date from which the rights of the depositor shall run.

A *règlement d'administration publique* shall regulate the maximum dimensions and weight of the specimens.

Art. 6.—Each deposit shall be evidenced by a report drawn up upon a special register by the clerk.

This report shall state the surname, Christian name, and domicile of the depositor, the number in order of registration, a brief description of the article deposited, the day and the hour of the deposit, the length of time during which the exclusive right is claimed, and the declaration that the depositor has presented the receipt for the fees required by Art. 16.

It shall be signed by the clerk, as well as by the depositor or his power of attorney.

Art. 7.—Three specimens shall be deposited. Each one of these specimens shall bear the signature required by the report, except when the deposit is secret.

Only one report can be drawn up for patterns and models of the same nature belonging to the same person, and deposited at the same time.

Art. 8.—A copy of the report and one of the specimens shall be handed to the depositor.

A second specimen shall be deposited at the office of the clerk of the tribunal.

The third shall be sent by the clerk to the central *depot*, chosen for that purpose by the Minister of Agriculture and Commerce.

Art. 9.—These specimens shall be open to the public without the charge of a fee.

Every person shall be able to obtain a copy at his own expense, upon fulfilling the formalities, which shall be determined by a *règlement d'administration publique*.

Art. 10.—Specimens may be deposited under seal.

In this case the specimens shall be presented to the clerk in three separate envelopes, which shall be dated, and shall bear a declaration of the depositor, stating the number of the specimens deposited, and stating that the specimens in the separate envelopes are respectively identical.

These envelopes shall be signed by the said depositor, and sealed with his seal.

Only a single envelope shall be used for patterns of the same nature, belonging to the same person, and deposited at the same time.

The clerk shall put his mark upon the envelopes, and affix thereto the seal of his Court.

A *règlement d'administration publique* shall determine the maximum of dimensions and weight of the envelopes permitted.

Art 11.—One of these envelopes shall be returned to the depositor; the other two shall remain deposited with the clerk until the day when the specimens can be made public.

Art. 12.—Upon that day a copy of the said specimen shall be sent to the central *dépôt* mentioned in Art. 8.

Art. 13.—The specimens referred to in Art. 10 shall not be kept secret for more than one year from the day of deposit.

Art. 14.—If during this time a dispute should arise as to the property of a pattern or model deposited conformably to Art. 10, the President of the Tribunal having jurisdiction in the case shall proceed to the opening of the envelopes which have been returned to the parties in suit, in compliance with Art. 11. This magistrate shall, in addition, address letters rogatory to the President of the Tribunal where the envelopes have been deposited, requesting him to open the said envelopes. The clerk shall draw up a report of that operation.

Art. 15.—The clerk shall have a right to exact a fee of three francs for the drawing up of every report, and for the cost of every remittance, without including the expenses of stamp and registration.

Art. 16.—A fee of one franc shall be paid for each specimen every year during which the exclusive right has been demanded.

Art. 17.—Every false declaration, in case of a deposit under seal, made with a view of avoiding the payment of the fees required by Art. 16, shall be punished by a fine of from 100 fs. to 500 fs., and shall give rise to damages in a sum amounting to ten times the value of the rights which have been violated. This is without prejudice to the annulment provided for by Art. 21.

Art. 18.—An official sheet shall publish periodically the names of the depositors, accompanied by the details required by Art. 6 for the reports, besides that relative to the presentation of the receipt for fees.

TITLE III.

OF THE RIGHTS OF FOREIGNERS.

Art. 19.—Strangers residing in France shall have the benefit of the present law, by fulfilling the formalities which it requires.

Art. 20.—Strangers and French citizens residing outside of France shall enjoy the provisions of this law, by fulfilling the same formalities, if there exist in the country where they reside, diplomatic treaties or laws by which a reciprocity is allowed for French patterns and models.

In such case the foreign patterns and models shall be deposited at the office of the clerk of the Tribunal of Commerce of the Seine.

TITLE IV.

WHEN VOID AND WHEN VOIDABLE.

Art. 21.—Registration shall be void *ab initio* in the following cases :—

1. If the patterns or models, specimens of which have been deposited, are not new ;
2. If, prior to the deposit, they have been commercially published ;
3. If, in case of deposit under seal, the depositor is convicted of having made false declarations ;
4. If the deposit has been made by one other than the true owner.

In case the deposit shall have been declared void, a brief mention of the decision shall be made by the clerk upon the demand of any interested party, upon the margin of the report drawn up in compliance with Art. 6.

Advice of this entry shall be transmitted by the clerk to the competent authority, in order that it may be inserted in the official journal published by the administration.

Art. 22.—The deposits are voidable in the following cases :—

In case the depositor shall not have dealt in the models or designs in France during the year following the date of deposit ; if the deposit has been made not under seal, or within the year which shall follow the publication of the deposit, if under seal, unless the impossibility of doing so has been inscribed upon the margin of the report, concerning which impossibility the Courts shall have the discretion of deciding in case of dispute.

TITLE V.

OF COUNTERFEITING, ITS PROSECUTION AND ITS PENALTIES.

Art. 23.—Every infringement on the rights guaranteed by the present law, whether by reproduction or by fraudulent imitation of a commercial pattern or model of which specimens have been duly registered, used upon an article of the same nature or of different nature, constitutes the crime of counterfeiting, and is punishable by a fine of from 100 fs. to 2,000 fs.

If the counterfeiter or imitator is a workman or *employé* who has worked for the party injured, or if he has obtained cognisance of the patterns or models through a workman or *employé* in the same category, he shall be subject, in addition, to imprisonment for from one to six months.

The same penalties may be inflicted upon :—

1. Accomplices within the terms of Art. 60 of the Penal Code ;
2. Those who shall, with guilty knowledge, have received, sold, exposed for sale, or introduced upon French territory one or more articles counterfeited or fraudulently imitated.

Guilty parties may, in addition, be deprived, during a time which shall not exceed five years, of the right of voting, or of being elected to the tribunals and Chambers of Commerce, as well as to the *Conseils de Prudhommes*.

The tribunal having jurisdiction may, upon the demand of the plaintiff, apply the provisions of Art. 1,036 of the Code of Civil Procedure, relative to the insertion and posting up of judgments, without affecting the amount of damages.

Art. 24.—In case of a second offence, the fine may be doubled, and the guilty party shall be condemned to imprisonment for from one to six months.

It shall be considered a second offence if a conviction for the misdemeanour, whether under the present law, or under those which regulate artistic and industrial property, shall have been pronounced within five years.

In the case provided by the second paragraph of the preceding Article, the penalty of imprisonment may be increased to one year.

Art. 25.—Art. 463 of the Penal Code is applicable to misdemeanours covered by the preceding provisions.

Art. 26.—The penalties inflicted by the present law cannot be cumulated.

Only the greatest penalty may be inflicted for all the acts anterior to the date of the first prosecution.

Art. 27.—A criminal action for the application of these penalties cannot be instituted by the *Ministère Public*, except upon the complaint of the injured party.

This party shall have the right to arrest the proceedings by abandoning his complaint, in which case the Public Treasury shall have recourse against that party for the recovery of the costs and disbursements.

Art. 28.—In case of conviction, the articles recognised to have been counterfeited or fraudulently imitated, and the instruments or utensils which have particularly served for their manufacture, and could serve no other purpose, shall be confiscated.

Confiscated articles shall be handed over to the owners of the patterns or models.

In case of acquittal, confiscation of the articles recognised to have been counterfeited can alone be exacted.

TITLE VI.

OF JURISDICTION.

Art. 29.—Civil actions respecting commercial patterns and models shall be brought before the Civil Courts and judged as summary proceedings, unless the dispute arises amongst merchants; in this case the Commercial Courts shall have jurisdiction, conformably to Art. 621 of the Code of Commerce.

Art. 30.—In case of criminal prosecution, the Court before which the case is brought shall have jurisdiction over the defences, whether they set up that the registration was void, or that it was voidable, or over questions relating to the right of user of the designs or models.

Art. 31.—The injured party shall have recourse to *huissiers* for the purpose of *description*, with or without seizure, of the objects declared to be counterfeited or fraudulently imitated, by virtue of an order of the Civil Court having jurisdiction over the place where the proceedings are to take place.

The *description* and seizure shall include the instrument and utensils which have been used particularly for the perpetration of the misdemeanour, as well as articles which may serve to prove it, and may be considered as evidence for the prosecution.

The order shall be granted upon a simple petition signed by the party or by his power of attorney, and upon the production of the certificate of registration exacted by the present law; it shall contain, if occasion requires, the appointment of an expert to aid the *huissier* in his proceedings.

The President shall, in addition, authorise the party making the seizure to obtain the assistance of an officer of police or of the justice of the peace of the *canton*.

The said order may require of the petitioner security, which this latter shall be obliged to give, before proceeding to the execution of the order.

Security shall always be required of a petitioner who is a stranger, and has no domicile in France.

A copy of the articles described or seized shall be left with the party holding the same, as well as the order and the certificate of deposit of security when the order requires it; all this under penalty of nullity and of damages against the *huissier*.

Art. 32.—In case of objection or resistance to the execution of the order, a referee shall be appointed by the President of the Tribunal. For this purpose an adjournment shall be had and a watch put upon the premises, outside or inside, or both, if the occasion demands it.

Art. 33.—If the party prosecuting fail to institute an action either before the civil or before the criminal Courts, within 15 days from the day when the operations specified in Art. 36, together with one day for every five *myriamètres* of distance between the place where the objects described or seized are found and the domicile of the defendant, these operations shall be *ipso facto* void, without prejudice to an action for damages therefor.

This limitation shall not run while the referee is sitting, in conformity with Art. 32; it shall recommence to run from the day when the order of the president shall be rendered final.

Art. 34.—The present law shall have no effect till six months after its promulgation.

Nevertheless, registrations effected before this promulga-

tion shall not reserve to the party registering an exclusive right for more than 15 years.

Art. 35.—Patterns or models previously deposited at the archives of the *conseils de prudhommes*, or at the clerks' office of the civil Courts, shall be transported to the clerk's office of the Tribunal of Commerce having jurisdiction.

The specimens of models shall immediately be made public, patterns shall be made public one year after the expiration of the term fixed by Art. 34.

Art. 36.—In case the depositor, at the moment of the deposit of his pattern or model, shall have claimed to reserve the exclusive property in himself, the length of time during which he shall be entitled to exclusive property shall be reduced to 15 years, running from the day when the present law shall become executory.

However, the depositor shall have the right to obtain a renewal for new terms of 15 years, at the most, by accomplishing the formality of declaration required by Art. 4, and paying the fees specified in Arts. 15 and 16.

From the day specified in the first paragraph of the present Article, the depositor shall be liable to have his registration declared void or voidable, according to the provisions of Arts. 21 and 22.

Art. 37.—A *règlement d'administration publique* shall enact the provisions necessary for putting this present law into execution.

Art. 38.—Ordinances rendered in the same manner shall regulate the application of this law to Algiers and the Colonies.

Art. 39.—The fees specified in Art. 16 shall be received by the consul, who shall transmit the specimens either to the clerk of the Tribunal of Commerce of the depositor, or if he has no domicil, to the clerk of the Tribunal of Commerce of the Seine.

Art. 40.—All prior provisions contrary to the present law, relative to commercial patterns or models, are hereby repealed.

LAW RELATING TO THE ALTERATION AND FRAUDULENT USE OF NAMES UPON MANUFACTURED GOODS.

Issued the 28th July, 1824.

Art. 1.—Every person who shall either affix or cause to appear upon manufactured goods the name of a manufacturer other than that of the person who is the real manufacturer of the same; or the firm name of a factory other than that in which the said goods shall have been manufactured; or, finally, the name of a place other than that in which the goods shall have been manufactured, either by adding thereto, or by taking therefrom, or by alteration of any kind whatever, shall be liable to the penalties provided for by Art. 423 of the Penal Code, without prejudice to an action for damages, if grounds for such may have arisen.

Every merchant, agent, broker or retailer, shall be subject to prosecution if he shall have knowingly exposed for sale, or put into circulation, articles bearing names that have been altered or fraudulently used.

Art. 2.—The above-mentioned cases of infringement shall no longer be subject to the provisions relating to the infringement of particular marks provided for by Arts. 142 and 143 of the Penal Code, Art. 17 of the Law of the 12th April, 1803, notwithstanding.

APPENDIX.

Containing provisions of the Civil Law, and various subjects referred to in the preceding Commentary and Text.

IMPRISONMENT FOR DEBT.
PRIVILEGES.
LEGAL MORTGAGES.
JUDICIAL MORTGAGES.
CONVENTIONAL MORTGAGES.
PRESCRIPTION.
LIMITATION OF ACTIONS.
MARRIAGE CONTRACTS.
HUSBAND AND WIFE.
COMMUNITY.
SEPARATION OF DEBTS.
SEPARATION OF PROPERTY.
DOTAL SYSTEM.
PARAPHERNALIA.*

Imprisonment for debt.

The law of July 22nd, 1867, abolishes imprisonment for debt in all civil and commercial matters, the benefit of which statute extends to foreigners. It still exists in favour of the State for non-payment of fines, restitutions, and damages adjudged in criminal, correctional, and police matters; but five days' notice must be given before the imprisonment can take place. The same rule applies to fines, restitutions, and damages adjudged in favour of private individuals.

In those cases where persons are imprisoned at the instance of private individuals, the latter are obliged to maintain the debtors while in prison, and maintenance for 30 days at least must be paid in advance. If in Paris, the amount is 45 fs.; in

* Translation of French Civil Code (Longmans).

large towns, 40 fs.; and elsewhere, 35 fs. a month. In default of such payment in advance, the debtor is at once released, and cannot be again imprisoned for the same debt.

The duration of such imprisonment is thus regulated:—From two to 20 days, when the fine or penalty does not exceed 50 fs.; from 20 to 40 days, when over 50 fs. and not exceeding 100 fs.; from 40 to 60 days, when 100 fs. and not exceeding 200 fs.; from two to four months, when over 200 fs. and not exceeding 500 fs.; from four months to eight months, when over 500 fs. and not exceeding 2,000 fs.; and from one to two years when above 2,000 fs.. this is the longest term of imprisonment for such debts.

For fines imposed at a police Court, the imprisonment cannot exceed five days.

When such prisoners can prove their insolvency, they are released after half of the time of imprisonment imposed by the judgment.

Persons so sentenced may avoid imprisonment by finding responsible sureties, who must pay within a month. A debtor, once released, cannot be again imprisoned in consequence of a previous sentence, unless it was for a longer term, in which case the time he was imprisoned is deducted.

A person under 16 years of age cannot be sentenced to imprisonment for debt. A debtor 60 years old is only imprisoned for one-half of the term fixed by the law.

Imprisonment for debt cannot be adjudged against a debtor at the instance of—1. His or her consort; 2. His or her ascendants, descendants, brothers or sisters; 3. His uncle or aunt, his great-uncle or great-aunt, his nephew or niece, his grand-nephew or grand-niece, and other relatives in the same degree.

Imprisonment for debt cannot be enforced simultaneously against husband and wife, even when the debts are distinct.

A Court of law may, in the interest of minors, children of the debtor, suspend the execution of the sentence of imprisonment for one year.

Of Privileges and Mortgages.

(Code Napoléon, Arts. 2,092–2,113.)

GENERAL DISPOSITIONS RESPECTING PRIVILEGES AND MORTGAGES.

Whoever binds himself personally is, to the extent of all his real or personal property, present and future, bound to fulfil his obligation. The property of the debtor is the common

security of his creditors; and in the event of a sale, the price is rateably divided among the creditors, unless among them there is a lawful cause of preference. The legal causes of preference are privileges and mortgages.

Privileges.

A privilege is a right which confers upon the creditor, by the nature of his claim, a preference over other creditors, even mortgagees. Privileged claims of equal rank are paid rateably. Privileges on account of duties due to the State are regulated by special Acts; nevertheless, the State cannot obtain privileges to the prejudice of rights previously acquired by third parties. Privileges may be enforced either upon real or personal property.

Privileges upon Personal Property.

Privileges are either General or Special.

GENERAL PRIVILEGES.

The claims which are privileged upon moveable property in general are the following, and they take precedence in the order given:—1. Law costs; 2. Funeral expenses; 3. Expenses of a last illness; 4. Servants' wages for the year due and for the running term; 5. Debts due for supplies of provisions to the debtor and his family during the last six months to retail tradesmen, such as bakers, butcher and others, and to schoolmasters and wholesale dealers for the last year.

Privileges on Special Moveables.

The privileges which may be enforced upon special moveables are:—1. For rents of real property; upon the fruits of the year's harvest; upon the furniture of the house or farm rented; upon all that is used for the working of the farm—that is, to the amount of all that is due, or which may hereafter be due, if the leases are authentic, or if under private signature, they have a certain date. In these two cases, the other creditors have a right to relet the house or farm for the remainder of the lease, and to receive the benefits of such leases and rents, on condition that they pay to the owner all that remains due to him. In default of authentic leases, or leases under private signature without a certain date, the privilege remains for one year after the expiration of the current year. The same privilege holds with regard to tenants' repairs, and to all that relates to the performance of

the conditions of the lease. Nevertheless, sums due for seed or for the expenses of the year's harvest are paid from the sale of the harvest, and those due for implements from the sale of such implements, in preference to the landlord in both cases. The landlord, however, may distrain the furniture, when removed without his consent, and he retains his privilege over it, provided he has made his claim within 40 days if it is the furniture of a farm; if of the furniture of a house, within 15 days. 2. For the claim upon the pledge of which the creditor is in possession. 3. For expenses incurred in the preservation of the thing. 4. For the price of unpaid moveable effects, if still in the possession of the debtor, whether bought on credit for a certain or an uncertain time for payment. If the thing has been sold on credit without any fixed time of payment the vendor may claim it while it remains in the possession of the buyer, and thereby prevent its sale, provided that the claim is made within a week of the delivery, and that the thing is in the same condition as when delivered. The privilege of the vendor, however, can only be enforced after that of the landlord of the house or farm, unless it is proved that the landlord knew that the furniture and other effects in the house or farm did not belong to the tenant. 5. For innkeepers' claims upon the goods of travelers brought to his inn. 6. For carriers' expenses upon the thing carried. 7. For claims resulting from misuse and betrayal of trust committed by public officers in the exercise of their duties.

Privileges upon Real Property.

Creditors having privileges on real property are :—

1. The vendor, upon the estate sold, for the payment of the price. If there are several successive sales, of which the price is due in whole or part, the first vendor is preferred to the second, and the second to the third, and so on.
2. Those who have supplied money for the purchase of an estate, provided it is legally proved by an authentic deed of loan that the money borrowed was for that purpose, and by the receipt of the vendor that such payment was made with the money borrowed.
3. Co-heirs upon the real property of the succession, as securities of the partitions made between them, of the payment of money to equalise the shares divided, and of the return of the lots to the succession.
4. Architects, builders, masons, and others employed on building or repairing houses, canals, or

any other work whatsoever, provided that a valuation had been previously drawn up by a valuer appointed by the Court of First Instance of the place, and that the works had, within six months after completion, been verified by value as likewise legally appointed; but the privilege cannot exceed the valuation certified by the second valuer, and is reducible to the value of the property at the time of sale. 5. Those who have lent money to pay or reimburse the workmen, provided such advance is proved by an authentic deed of loan, and by the receipt of the workmen.

Privileges that apply both to Real and Personal Property.

Privileges that apply both to real and personal property are those enumerated under the title "General Privileges on Personal Property," such as law costs, funeral expenses, expenses of a last illness, servants' salaries, and supply of provisions to the debtor and his family.

When, in default of moveables, the privileged creditors above enumerated are paid from realty, concurrently with creditors who have a privilege upon the estate, the payments are made as follows :—1. Law costs and those above enumerated. 2. Claims of the vendor and others mentioned under the title "Privileges upon Real Property."

How Privileges are preserved.

Among creditors, privileges have no effect respecting real property, unless they are at the mortgage office, and then they date from such registration, subject to the following exceptions: Law costs, funeral expenses, servants' wages, supply of provision to the debtor or his family. All these are exempted from registration.

A vendor retains his privilege by the registration of the title deed which has transferred the property to the purchaser, and which shows that the whole or part of the price is still due to him. Nevertheless, the registrar of mortgages is bound, under pain of damages to third persons, to inscribe officially in his register the debts stated in the deed which transferred the ownership both in favour of the vendor and lender, who may also cause a registration to be made, if not already done, in order to obtain a mortgage for that which is due to them. A co-heir or joint sharer retains his privilege upon the property of each lot, or upon property sold by auction, for what is due to equalise the lots (*soutte*), or their return to the succession;

or for the proceeds of the sale, by registration of the mortgage made at his instance within 60 days from the deed of partition or of the sale, during which time no mortgage can take place upon the property encumbered with *soutte*; or the property sold by auction, to the prejudice of the creditor who has to receive the *soutte* or the proceeds of the sale. Architects, contractors, masons, and other mechanics employed in building, reconstructing, or repairing buildings, canals, or other works, and those who have lent money for this purpose, retain their privilege by registration: first of the official report (*procès verbal*) stating the condition of the property: secondly, of the official report verifying the completion of the work. Their privileges date from the registration of the first report. Creditors and legatees who demand the separation of the property of the deceased from that of his heirs, retain in respect of the creditors of the heirs or representatives of the deceased, their privileges upon the real property of the succession by the registration of their mortgage within six months from the commencement of the succession. During this term no mortgage can be validly registered by the heirs or their representatives to the prejudice of such creditors or legatees.

The transferees of these various privileged claims enjoy the same rights as the transferors.

All privileged creditors whose claims are subject to registration, in regard to which the prescribed formalities have not been fulfilled, are still entitled to the benefit of mortgage: but the mortgage only dates, with respect to third persons, from the day of registration, which is effected as afterwards explained.

Of Mortgages.

Mortgage is a real right over immoveables given as security for the discharge of an obligation. It is in its nature indivisible, and exists in entirety upon all the immoveables, upon each and every part of the immoveables encumbered, and the mortgage follows the property into whatever hands it may pass.

Mortgage can only take place in the cases and according to the formalities prescribed by law, and may be either legal, judicial, or conventional. Legal mortgage is that which results from the law. Judicial mortgage is the result of judgment or judicial acts. Conventional mortgage results from agreements, deeds and contracts. The following things only are capable of being mortgaged:—1. Real property at is saleable, and its

accessories, considered immoveable. 2. The usufruct of such property and accessories as long as the usufruct lasts.

When the moveable accessories are separated from the immoveable, they cease to be encumbered with mortgage.

Legal Mortgages.

The rights and claims to which legal mortgages apply are—

1. Those of married women upon the property of their husbands. 2. Those of minors and interdicted persons upon the property of their guardian. 3. Those of the State, parishes, and public institutions, upon the property of their treasurers and responsible administrators.

A creditor who has a legal mortgage may enforce his right upon all the real property belonging to his debtor, and upon that which he may afterwards possess, with the modifications hereafter explained.

JUDICIAL MORTGAGES.

Judicial mortgage results from judgment in cases where adverse parties have been heard, or which have been adjudged by default. It results also in trials, from admissions or verifications of signatures affixed to an obligatory deed under private signature. It may be exercised upon the present real property of the debtor, and upon that which he may afterwards acquire, according to the rules hereafter set forth.

Decisions by arbitration do not involve mortgage until their decision has been judicially authorised. A mortgage, in like manner, cannot result from judgments given in a foreign country unless they have been adjudged executory by a French Court, without prejudice to contrary rules established by treaty.

CONVENTIONAL MORTGAGES.

Conventional mortgages can only be effected by persons capable of alienating the real property. Persons whose right to real property is suspended by a condition, or voidable, or is subject to rescission, can only grant a mortgage subject to the same conditions or the same rescission.

The property of minors, of interdicted persons, and that of absent persons, as long as the possession is only provisionally granted, cannot be mortgaged, except in cases established by law, or when legally adjudged.

Conventional mortgages can only be effected by an authentic deed executed by two notaries, or by one notary and two wit-

nesses. Contracts entered into in a foreign country do not confer a mortgage upon property in France, unless otherwise ruled by international treaties.

Conventional mortgages are not valid unless—in the authentic deed which establishes the claim, or in a subsequent authentic deed—the nature and situation of each of the immoveables actually belonging to the debtor over which he grants the mortgage are specially set forth. Each immoveable which he at the time possesses may be encumbered by mortgage, but property not yet in his possession cannot be mortgaged. Nevertheless, if the present and unencumbered property of the debtor is insufficient for the security of the debt, he may, by declaring such insufficiency, consent that the property which he may afterwards acquire shall be encumbered as soon as it comes into his possession. In like manner, when the present immoveables burdened with mortgage have perished or been deteriorated, so as to render them insufficient for the security of the creditor, the latter may either sue immediately for payment or for an additional mortgage.

Conventional mortgages are only valid in so far as the sum for which they have been granted is fixed and determined by the deed. If the claim resulting from the obligation is conditional or indeterminate as to its value, the creditor cannot demand its registration, except to the amount of an estimated value expressly declared by him, and which the debtor, if there is ground for it, may have reduced.

A mortgage extends to all the improvements that may be made upon the immoveables mortgaged.

Of Prescription.

(*Code Napoléon, Arts. 2,219—2,281.*)

Prescription is a mode by which property is acquired, or by which a debt is discharged by a certain lapse of time. Rights by prescription cannot be renounced by anticipation; but when acquired, they may be renounced.

Renunciation of rights by prescription is express or implied. Implied renunciation results from an act by which the abandonment of the right acquired may be presumed. Persons who cannot alienate cannot renounce a right by prescription that has been acquired.

Courts cannot suggest officially the pleas of prescription. Prescription may be set up at every stage of a suit, even

before the Court of Appeal, unless the party who has not set up his plea of prescription may be presumed to have renounced it. Creditors and all other persons having an interest in establishing prescription may set it up, although the debtor or owner renounces it.

Prescription does not apply to ownership of things that are not marketable. The State, public institutions, and parishes are bound by the same prescription as private persons, and have the same right to set it up.

Possession.

Possession is the holding or using a thing or a right which a person holds or exercises by himself, or which is held or exercised by another in the name of such person.

To acquire a prescriptive right, the possession of the thing must be continuous and uninterrupted, peaceable, public, unequivocal, and as an owner. A person is always presumed to possess for himself, and as owner, unless it be proved that he began his possession for another. When a person has begun possession for another, he is always presumed to continue by the same right, unless there is proof to the contrary.

Acts which are merely optional and on simple sufferance, can give no ground either for possession or prescription; nor can deeds of violence give possession on which prescription may be grounded. The possession which avails for prescription begins only when the violence has ceased. A present possessor who proves that he was in possession at a former period, is presumed to have been in possession during the intermediate time, unless the contrary is proved. In order to complete the term of prescription, a person may add to his own possession that of the person to whom he has succeeded.

Causes which bar Prescription.

Persons who are in possession for others cannot claim prescriptive right, whatever may be the lapse of time—thus the tenant, the depositary, the usufructuary, and all who hold the property of others by precarious tenures, cannot acquire a prescriptive right, neither can their heirs.

Nevertheless, they can claim prescription if the title of their possession is changed, either from a cause arising from a third party, or by the opposition they set up against the rights of the owner. Those persons to whom tenants, depositaries, and

other precarious holders have transferred the thing by a title deed conveying ownership have a right of prescription.

A person cannot prescribe in opposition to his own title—in this sense, that no one can change the cause and principle of his possession. A person may prescribe against his own title in this sense, that he has a right by prescription to free himself from an obligation that he has contracted.

Causes that interrupt or suspend the run of Prescription.

Prescription may be interrupted either naturally or civilly. Natural interruption takes place when the possessor is deprived for more than a year of the use of the thing, either by the former owner or by a third person. Civil interruption takes place when a summons before a Court of law, or formal demand or seizure, has been made in due form upon the person whose prescription it is sought to interrupt.

A summons for the purpose of conciliation (*citation en conciliation*), before a justice of peace, interrupts prescription from the day of its date, when it is followed by a summons before the Court of First Instance within the time prescribed by law. A summons even before an incompetent judge interrupts prescription. If the summons is void through informality, if the plaintiff stops his action, or if he allows his action to be barred by limitation, or if his demand is rejected, the interruption is considered as not having occurred.

Prescription is interrupted by any acknowledgment which the debtor or possessor makes of the right of the person against whom the prescription was running. A summons served upon, or an acknowledgment by one of the joint and several debtors, interrupts prescription against all the others, and even against the heirs. A summons served upon one of the heirs of a joint and several debtor, or the acknowledgment of such heir, does not interrupt prescription with regard to the other co-heirs, even if the debt should be secured by mortgage, if the obligation is not indivisible. Such summons or acknowledgment does not interrupt prescription with regard to the other joint debtors, except for the share due by such heir. To interrupt prescription for the whole, in respect of the other joint debtors, the summons must be served upon all the heirs of the deceased debtor, or the acknowledgment must be made by all the heirs. A summons served upon the principal debtor, or his formal acknowledgment, interrupts prescription against the surety.

Causes that suspend Prescription.

Prescription runs against all persons, unless excepted by law. It does not run against minors and interdicted persons, except for arrears of annuities for maintenance, rents of houses and farms, interest for sums lent, and generally for sums to be paid annually or for shorter periods, which are prescribed after five years. Prescription does not run between husband and wife, but it runs against a married woman, although not separated either by marriage contract or judicially, in respect of the property of which the husband has the administration ; but she has her remedy against her husband. Nevertheless it does not run during marriage in case of the alienation of an estate settled in dowry, conformably to the chapter upon "Marriage Contracts, and the respective rights of Husband and Wife." Prescription is, in like manner, suspended during marriage. 1. When the action of the wife cannot be brought till an election is made either of acceptance or renunciation of community. 2. When the husband, having sold property belonging to the wife without her consent, is warrantor of the sale, and in all other cases where the action of the wife would be against the husband.

Prescription does not run with respect to debts depending on a condition, until such condition happens ; nor in cases of actions in warranty, until eviction has taken place ; nor with respect to debts at a fixed date, until such term has expired. Prescription does not run against a beneficiary heir with respect to claims he has against the succession, but it runs against a vacant succession, although not provided with a curator. It runs also during the three months allowed for preparing the inventory, and during the forty days for deliberation.

Time required for Prescription.

Prescription is reckoned by days and not by hours. It is acquired when the last day of the term has expired:

Prescription of Thirty Years.

All actions, real and personal, are prescribed by 30 years, without the party prescribing being bound to produce any title or exception of bad faith being set up against him. After 20 years from the date of the last title, the debtor of an annuity may be compelled to supply at his own cost the creditor or his legal assigns with a fresh title.

The rules of prescription as to things other than those mentioned are as follows :—

Prescription of Ten and Twenty Years.

A person who acquires real property, in good faith and by an equitable title, is entitled to ownership by prescription after the lapse of 10 years, if the real owner lives within the jurisdiction of the Court of Appeal where the property is situated; and after 20 years, if he lives out of such jurisdiction. If the real owner has had his domicile at different times within and without the jurisdiction, it is necessary to add to the years of presence the double of the years of absence. A title void on account of informality cannot serve as a ground of prescription for 10 or 20 years.

Good faith is always presumed, and the onus lies on the party who alleges bad faith to prove it. It is sufficient if good faith existed at the time of the purchase.

After ten years, architects and contractors are discharged from their warranty for substantial works (*gros ouvrages*) erected by them or done under their superintendence.

Special Prescriptions.

After six months the following claims are barred by prescription :—Claims of tutors in sciences and art for lessons given at so much a month; of innkeepers and eating-house keepers on account of lodging and food; of workmen and labourers for the payment of their day's expenses, provisions, or wages.

Those of doctors, surgeons, apothecaries, for visits, operations and medicines; sheriff's officers for their fees; tradesmen for goods sold to private persons not dealers; boarding-school keepers for the price of the board of their pupils, and of masters for the premiums of apprenticeship, and domestic servants who are hired by the year are barred by prescription after one year.

Claims by solicitors for the recovery of their fees and costs are barred by prescription after the lapse of two years, reckoning from the judgment in a suit or from the agreed settlement out of Court of the parties, or from the demand of the said solicitors. After the lapse of five years, costs and charges in unsettled lawsuits cannot be claimed.

Prescription in all these cases takes place, although there has been a continuation of supplies, deliveries of goods, services

and work. It only ceases to run when there has been a settlement, security given, or summons before a Court of law. Nevertheless, those persons against whom such prescriptions are set up may put the opposing party on their oath as to payments. Widows, heirs, or guardians, may be put on their oath to declare their knowledge of the payment or non-payment of the debt. Judges and attorneys are discharged, as to legal documents, after five years from judgment in the suit; tipstaffs after two years from the execution of their duty.

The arrears of annuities, those of allowances for maintenance, rents of houses and farms, interest on sums lent, and generally everything that is payable by the year are prescribed after five years.

The above prescriptions may be set up against minors and interdicted persons, who, however, have their remedy against their guardians.

With regard to personal property, possession is equivalent to a title. Nevertheless, a person who has lost a thing, or from whom it has been stolen, may claim it within three years from the day of loss or theft, from the possessor; but the latter has his remedy against the person from whom he obtained it. If the person in possession of the thing lost or stolen purchased it at a fair, or in market overt, or at a public sale, or from a dealer who sells things of the same kind, the real owner cannot recover it, unless he pays the possessor the price which it cost him.

OF MARRIAGE CONTRACTS AND OF THE RESPECTIVE RIGHTS OF HUSBAND AND WIFE.

GENERAL PROVISIONS.

[*Code Napoléon*—Arts. 1,387—1,496.]

The law does not interfere in matrimonial arrangements respecting property—except when there are no special agreements, which the parties may make as they think proper—provided they are not contrary to good morals, and not in violation of the following rules:—

Consorts cannot derogate from the rights incident

to the authority of the husband over the persons of his wife and children, or the rights which belong to him as head of the family, nor from the rights conferred upon the surviving spouse under the titles of "Paternal Authority," "Minority," "Guardianship," and "Emancipation." They cannot make any agreement or renunciation which would change the legal order of succession, whether in reference to themselves in the succession by their children or descendants, or with reference to their children in the succession between themselves; without prejudice to gifts inter vivos or testamentary dispositions, which may take place in the forms and in the cases prescribed by law.

Husband and wife cannot stipulate in a general way that their union shall be regulated by any of the customs, laws, or local statutes which formerly prevailed in different parts of the French territory, now repealed by the present code. They may, nevertheless, declare in a general manner that they intend to be married under the régime de la communauté,* or under the dotal system (le régime dotal). In such cases, the respective rights of husband and wife, and their heirs, are governed by the rules, under the title of "Community of Goods" and "Dotal System." However, by the Act of July 10th, 1850, if in the registration of marriage it is stated that the husband and wife married without a marriage settlement, the wife shall be deemed, in respect of third parties, capable of contracting in general and common affairs; unless she has in the contract declared to have made a marriage settlement. The bare stipulation that the wife settles upon herself property in dowry, or that property has been so settled upon her, is not sufficient to subject the property to the dotal régime, unless in the marriage settlement there is an express declaration to that effect. Neither does the dotal system result from the bare declaration made by husband and wife, that they marry without community of

* Possession in common.

goods, or that they will remain separate in property (*séparés de biens*).

In default of special stipulations which derogate from the system of community, or which modify it, the rules hereafter laid down form the common law of France:—

All marriage settlements must be drawn up before marriage by a notary, and cannot be altered after marriage. Alterations in the settlement before marriage must be made in the same form as the marriage settlement. Any alteration or deed of defeasance is not valid without the presence and consent of all the parties to the marriage settlement. All alterations and deeds of defeasance, even executed with the above formalities, are not valid with respect to third parties, unless they have been drawn up at the end of the minute of the marriage settlement; and the notary cannot, under penalty, deliver an engrossment or copy of the marriage settlement without transcribing at the end the alterations or deed of defeasance.

A minor capable of contracting marriage is able to enter into all agreements of which such contract is susceptible, and the stipulations and gifts which he has made in it are valid, provided he has been assisted in the contract by the persons whose consent is necessary to the validity of the marriage.

OF POSSESSION IN COMMON.*

The *communauté*, either legal or conventional, begins from the day of the registration of marriage,

* *Du régime en communauté*: The rights and interests of husband and wife in their property, and their liability for the debts of each other, are regulated by three laws:—1. The law of community; 2. The dotal law; 3. The law of separation of property. Under the *régime de communauté* the husband and wife become joint owners of the property falling into the community, which includes their present and future personal property; also the real property which either of them acquires after the marriage otherwise than by gift or succession, and the rents of the real property which either of them possessed at the time of the marriage.

and cannot be stipulated to commence at any other time.

Communauté, which is created by the simple declaration that the parties marry under that régime, or when there is no marriage settlement, is subjected to the rules hereafter explained.

Possession in common comprises rights to:—

1. All the personal property which the husband and wife possessed at the time of marriage, and all that accrues to them during marriage by succession of gift, unless the donor has expressed the contrary.
2. All the fruits, rents, and interest, of whatever kind, due or received during the marriage, and all that arise from property which belonged to the husband and wife at the time of the marriage, or which have accrued to them since, from whatever source.
3. All the real property acquired during marriage.

Real property (*immeubles*) is considered as having been acquired in common, if it is not proved that one of the consorts was the owner or in legal possession of it before marriage, or that it has accrued to him or her by heirship or gift.

Wood-felling, and the produce of quarries and mines, are subject, as regards community, to the rules laid down concerning these articles in the title of “*Usufruct, Use, and Habitation.*”

Real property which the husband and wife possess on the day of their marriage, or which accrues to them during the marriage by inheritance, is not in common. Nevertheless, if one of the consorts acquires real property after a marriage settlement, but before the celebration of the marriage, and the settlement contains a stipulation of community, the real property so acquired is in common, unless the acquisition was made in performance of a clause in the marriage settlement; in which case it is regulated by the contract.

Gifts of real property made during marriage to one of the married parties do not fall into the community, but belong to the donee solely, unless it is

expressly stated in the gift that the thing given shall belong to both in common. Real property, abandoned or transferred by a father, mother, or other ascendants, to one of the married parties, either in satisfaction of debts due by them to such party, or subject to the payment of debts due by the donor to strangers, does not fall in common, saving compensation or indemnity. Real property acquired during marriage in exchange for real property that belongs to one of the consorts does not fall in common, but is substituted in the place of that which was alienated, saving compensation when there is a difference in the value. A purchase made during marriage, at a judicial sale by auction,* or otherwise, of part of real property of which one of the consorts was joint owner, does not constitute an acquisition in common; the community, however, is indemnified for the amount withdrawn from it to make such purchase. When the husband personally and in his own name acquires, by purchase or by licitation, part or the whole of an estate of which the wife is joint owner, she, at the dissolution of the community, has the option either of abandoning the thing to the community, which then becomes her debtor for her share in the price, or of taking back the realty, and refunding to the community the price of the purchase.

LIABILITIES OF THE COMMUNITY AND ACTIONS RESULTING THEREFROM.

The liabilities of the communauté consist of:—

1. All personal debts due by the consorts on the day when the marriage was solemnised, or by the successions which fall to them during its continuance, saving compensation for liabilities relative to the real property that belongs separately to one or other of the consorts.
2. Debts, whether of principal sums, arrears or interests, contracted by the hus-

* À titre licitation.

band during the community, or by the wife with the consent of her husband, saving compensation in cases when it is due. 3. Arrears and interest only of such rents and debts as are personal to either of the consorts. 4. Repairs chargeable to the usufructuary of immoveables that do not fall in common. 5. The maintenance of the consorts, education and maintenance of their children, and all other charges incidental to marriage.

The communauté is only liable for the personal debts of the wife contracted before marriage when they are authenticated by public deed made before marriage, or by a private deed, proved to have been executed before marriage. Creditors of the wife who claim under deeds that are not proved to have been executed before marriage, cannot sue for payment except upon the bare property (*nue propriété*)* of the real property belonging to her. The husband who asserts that he has paid a debt of this nature for his wife cannot demand compensation either from her or her heirs.

Debts upon successions of purely personal property that falls to consorts during the marriage are entirely chargeable to the community; but debts of a succession of purely real property are not chargeable to the community, saving the right of creditors to sue for payment upon the real property of such succession. Nevertheless, if such succession has fallen to the husband, the creditors of the succession may sue for payment, either out of his private property, or even out of that of the community, saving, in the second case, the compensation due to the wife or her heirs. If a succession of purely real property has fallen to the wife, and she accepts it with the consent of her husband, the creditors of the succession have a right to sue for payment out of all the personal property that belongs to her; but if she accepts it, upon the refusal of her husband under judicial authority, the creditors, in the event of the real property of the succession proving insufficient,

* Property of which the usufruct belongs to another.

can only sue out of the *nue propriété* of her own real property.

When a succession, partly real and partly personal, falls to one of the consorts, the debts due by such succession are chargeable to the community to the extent of the portion of the debts that are assessed upon the personal property, regard being paid to the comparative value of the personalty and of the realty. Such assessment is determined by the inventory, which the husband is bound to see made, either in his own right, if the succession concerns him personally, or as directing and authorising the acts of his wife, if the succession has fallen to her. In default of an inventory, and in all cases where the omission to make one is prejudicial to the wife, she or her heirs may, at the dissolution of the community, sue for lawful compensation, and even prove by deeds, private writings, or by witnesses, and if necessary, by general rumour, of the description and value of the moveable property not entered in the inventory. Such proof is never allowed to be made by the husband.

The rules relating to a succession, partly real and partly personal, do not prevent the creditors of such succession suing for payment out of the goods of the community, whether the succession has fallen to the husband or to the wife, when the wife has accepted it with the consent of her husband, saving, in either case, respective compensation. The same rule applies if the succession has been only accepted by the wife as judicially authorised, and such personal property has been confounded, in default of an inventory, with that of the community. If the succession has only been accepted by the wife as judicially authorised, and there has been an inventory, the creditors can only sue for payment upon the real and personal property of the said succession; and if insufficient, upon the *nue propriété* of the real property belonging to the wife.

These rules respecting debts apply to gifts *inter vivos*, as well as to successions.

Creditors may sue for payment of debts contracted by the wife with her husband's consent, either upon the property of the community or upon that of the husband or wife, saving compensation due to the community, or indemnity due to the husband.

All debts which a wife contracts, in virtue of the general or special power (procurator) of her husband, are chargeable to the community, and creditors cannot sue for payment either against the wife personally or upon her private property.

MANAGEMENT OF THE COMMUNITY, AND EFFECTS OF ACTS OF EITHER CONSORT IN RELATION TO MARRIAGE.

A husband solely administers the property of the community, and may sell, alienate, or mortgage it without the concurrence of his wife; but he cannot, by gifts *inter vivos*, dispose of the real property of the community, nor of the whole or of a portion of the personalty, except it is for the settlement of children who are the issue of the marriage. He may, however, dispose of moveables by voluntary and private gifts to any one, provided he does not reserve the usufruct for himself. He cannot bequeath more than his share of the community; if he bequeaths a thing belonging to the community, the donee cannot claim it in kind, unless, in the partition, it falls to the share of the heirs of the husband; if it does not, the legatee is compensated for the whole amount of the things given out of the share of the heirs of the husband, or out of the private property belonging to him.

Penalties incurred by the husband for misdemeanours may be recovered out of the property of the community, compensation being made to the wife; those incurred by the wife can only be recovered out of the *nue propriété* of her real pro-

perty, so long as the community lasts. The criminal condemnation of one of the consorts affects only the delinquent's share in the community, and his or her private property.

Deeds executed by the wife without the consent of her husband, and even when she is judicially authorised, do not affect the property of the community unless she contracts as a public trader and for the purpose of her business. A wife cannot bind herself or the property of the community, even for the purpose of releasing her husband from prison, or setting up her children in business in her husband's absence until authorised by a Court of law.

A husband has the management of all the property of his wife, and may sue solely in all actions that relate to her. He cannot alienate her real property without her consent, and in default of due care he is responsible for deterioration of the property of his wife.

Leases of the wife's property, made by her husband solely, which exceed nine years, are not, in the event of the dissolution of the community, binding on the wife or her heirs, except for the time which has still to run, either of the first period of nine years, if not lapsed, or of the second period and so on, so that the leaseholder shall only have a right to complete the term of the nine years running. Leases for nine years, or for a shorter term, of the wife's property, which the husband solely has granted or renewed more than three years before the expiration of the running lease, if rural property, or more than two years if house property, are void unless they came into operation before the dissolution of the community.

A wife who binds herself jointly and severally with her husband in the affairs of the community or in the affairs of her husband, is in respect of him only deemed a surety, and must be indemnified against the obligation she has contracted. A husband who becomes surety jointly and severally, or

otherwise, in the sale of his wife's real property, has likewise a remedy, either upon her share in the common property, or upon her private estate if he is sued.

If real property belonging to one of the consorts is sold, or if servitudes due to his or her private estates have been redeemed, and the price been paid to the community without reinvestment, such consort has a right to deduct from the common property the value of the real property sold or of the servitude redeemed. Reinvestment is deemed to be made by the husband when, at the time of a purchase, he declares that it was made with the money arising from the alienation of real property that belonged solely to him, and that it was intended as a reinvestment. The declaration of the husband that the purchase is made with moneys arising from real property sold by his wife for the purpose of reinvestment is not sufficient, if such reinvestment has not been formally accepted by the wife. If she has not accepted it, she has, at the dissolution of the community, right to compensation for the value of the thing sold. Compensation for the value of real property belonging to the husband can only be claimed out of the bulk of the property in common; that for the value of real property belonging to the wife may be claimed out of the private property of the husband, if the property in common proves insufficient. In all cases, compensation is governed by the price realised at the sale, whatever may be alleged as to the value of the thing alienated.

Whenever a sum is withdrawn from the community to pay the personal debts or liabilities of one of the consorts, he or she for whom the money was withdrawn owes compensation for the amount. If the consorts have jointly given a marriage portion to their child, without mentioning the amount which either intended to contribute, each is deemed liable for a moiety, whether the portion has been paid or promised out of the effects of the com-

munity, or out of the private property of one of the consorts. In the latter case, such consort has a right to be indemnified out of the property of the other for the moiety of the portion. A marriage portion settled solely by the husband upon a child of the marriage, out of the common property, is chargeable to the community; and in the event of the wife accepting the community, she is responsible for the half of the marriage portion, unless the husband has expressly declared that he held himself responsible for the whole, or for a larger part than the moiety.

All marriage portions are guaranteed by the parties who make the settlements, and interest runs from the day of the marriage, unless otherwise stipulated.

DISSOLUTION OF THE COMMUNITY,* AND ITS CONSEQUENCES.

The community is dissolved:—1. By death. 2. By judicial separation. 3. By separation of property.

Communauté, in default of an inventory, does not continue after the death of one of the consorts; but interested parties may sue for a statement relative to the condition of the property in common, proof of which may be made by documents or common report. If there are children under age, the omission of an inventory causes the surviving consort to lose the usufruct of the revenues of such children, and the supplementary guardian who neglected to compel him or her to have an inventory made is held jointly and severally responsible with him or her for all indemnities that may be adjudged in favour of the minors.

Separation of property can only be sued for in a Court of law by the wife whose marriage portion is in peril, and when the disordered state of the

* Formerly, "Civil Death" and "Divorce," now abolished, also dissolved the community.

husband's affairs affords reason to fear that his property will not be sufficient to satisfy the claims and rights of the wife. All voluntary separation of property after marriage is void.

Separation of property, although adjudged by a Court of law, is void, if it has not been followed by the payment of the wife's claims, proved by an authentic deed, as far as the husband's property extends, or by a suit commenced within a fortnight after adjudication, and not afterwards interrupted. Every separation of property must, before execution, be publicly posted in the hall of the Court of First Instance; and if the husband is a merchant, banker, or tradesman, it must also be posted in the hall of the commercial Court of his domicile, on pain of nullity. A judgment declaring the separation of property takes effect from the day that the demand was made.

Private creditors of the wife cannot, without her consent, demand the separation of property. Nevertheless, in cases of bankruptcy or insolvency of the husband, creditors may exercise her rights to the amount of their claims. Creditors of the husband may obtain redress against a separation of property adjudged, and even executed, in fraud of their rights; they may even make themselves parties in the suit, on the petition for separation, in order to contest it.

A wife who has obtained a separation of property must contribute, in proportion to her means and to those of her husband, to the expenses of the household, and to those of the education of their children. She must bear these expenses solely, if the husband has no means.

A wife judicially separated, or separated only in property, regains the uncontrolled management of her property. She may dispose of her personal property, but she cannot alienate her real property without the consent of her husband; or, on his refusal, without the authority of the Court of First Instance.

A husband is not responsible for any omission to invest or reinvest the price of the real property which the wife, separated in property, has alienated under the authority of a Court of law, unless he has been a party to the contract, or unless the moneys have been proved to have been received by him or used to his advantage. He is answerable for the omission of investment or reinvestment, if the sale took place in his presence and with his consent; but he is not responsible for the disadvantage of the investment.

The communauté, dissolved either by judicial separation, or by a separation of property only, may be re-established by the consent of both parties. This must be effected by a deed executed before notaries, and a copy of the deed must be posted in the hall of the Court. In this case the community so re-established resumes its effect from the day of the marriage, and the affairs are placed in the same position as if there had been no separation, without prejudice, however, to the carrying out of such obligations as the wife may have legally entered into. Every agreement by which the consorts re-establish the community that differs from that by which it was previously governed is void.

A dissolution of the community by a judicial separation, or merely of property, does not imply the enforcement of the rights of the wife's survivorship; but she may claim them at the death of her husband.

ACCEPTANCE OF THE COMMUNITY, RENUNCIATION, AND CONDITIONS RELATING THERETO.

After the dissolution of the community, the wife or her heirs and assigns have the power of accepting or renouncing it, and any agreement to the contrary is void. A wife who has entered upon or interfered with the management of the

affairs of the community cannot afterwards renounce it. Acts purely administrative or conservatory do not imply interference. A wife of full age, who in a deed has represented herself as common in property, cannot renounce the community, nor be relieved from the position she has assumed, unless there has been fraud on the part of the heirs of the husband. A widow who desires to retain the right of renouncing the community must, within three months from the day of her husband's death, cause a correct inventory to be made of all the goods of the community, in the presence of the husband's heirs, or after having duly summoned them; and 40 days afterwards she must make her renunciation at the registrar's office of the Court of First Instance of the domicile of her husband. The widow may, according to circumstances, ask the Court for an extension of time for her renunciation, which, if granted, must be adjudged in presence of the heirs of the husband, or after they have been duly summoned.

A widow who has not renounced within the time prescribed is not deprived of her right of renouncing, provided she has not interfered with the management of the community and has had an inventory made; she can only be sued as being in community until she renounces, and she is liable for costs incurred up to her renunciation; she may likewise be sued after the expiration of the forty days from the closing of the inventory, if it has been closed before the three months.

A widow who has abstracted or concealed any of the effects of the community is declared to have accepted the community, notwithstanding her renunciation, and the same rule applies to her heirs. If the widow dies before the expiration of the three months without having made or completed the inventory, her heirs have a further delay of three months, reckoning from her death, to make and complete it, and of forty days after the closing of the inventory to deliberate on acceptance or

renunciation. If the widow dies after completing the inventory, her heirs have, in order to deliberate, a fresh delay of forty days from her death. They may, however, renounce the community, according to the rules above stated with reference to widows.

A wife judicially separated, who has not, within three months and forty days after the separation definitely accepted the community, is deemed to have renounced it, unless within the prescribed time she has obtained, in the presence of her husband, or after having duly summoned him, an extension of time from the Court. The creditors of the wife may dispute the renunciation which she or her heirs may have made in fraud of their claims, and may accept the community in their own right. The widow, whether she accepts or renounces, has a right, during the three months and forty days which are allowed her for making the inventory and for deliberation, to take, for her own and her domestics' maintenance, such supplies that may be in the house, and in default to borrow on account of the community, subject to the condition of using due discretion. She is not liable for rent for her residence during the delays, whether the house belongs to the community, or to the heirs of the husband, or held on lease.

In the event of the dissolution of the community by the death of the wife, her heirs may renounce the community within the delays and according to the forms prescribed by law respecting widows.

PARTITION OF THE COMMUNITY.

After the acceptance of the community by the wife or her heirs, the assets are divided and the liabilities borne in the manner hereinafter stated.

The consorts or their heirs must bring back to the community all that they owe for compensation

or indemnity. Each consort, or his or her heirs, must bring back, likewise, the sums drawn from the community, or the value of the property taken from it for a marriage portion for a child of another marriage, or a child of the present marriage.

From the bulk of the property each consort or heir takes—1. His or her private property that did not enter into the community, if it exists in kind, or the property acquired by reinvestment. 2. The price of the real property alienated during the community and not reinvested. 3. Indemnities due to him or her by the community.

The claims of the wife take precedence over those of the husband, for property which no longer exists in kind. First, from the ready money; next, from the personal property; and failing these, from the real property of the community. In the last case, the choice of the property is left to the wife and to her heirs. Deductions in favour of the husband are restricted to the property of the community. The wife and her heirs, in the event of the community proving insufficient, may enforce their claims upon the private property of the husband. The reinvestments and indemnities due by the community to the consorts, and the compensations and indemnities due by them to the community, bear interest from the day of its dissolution. After all the deductions of both consorts have been effected upon the bulk of the community, the surplus is divided, by moiety, between the consorts or their representatives. If the heirs of the wife do not agree, so that some have accepted and others have renounced the community, those who have accepted take only their respective shares in the property allotted to the wife; the remainder accrues to the husband, who is responsible to the heirs who renounced for such claims as the wife might have enforced in the event of renunciation, but only to the extent of the shares of the heirs who renounced.

The partition of the community, in all that

regards its formalities—the sale by auction of real property when there is occasion for it, the effects of the partition, the warranty resulting from it, and the payment of the balance—are subject to the rules prescribed, under the title “Of Successions for Partitions between co-heirs.”

A consort who abstracts or conceals things belonging to the community forfeits his or her share of them. After partition, if one of the consorts is the personal creditor of the other—as when the price of the property of one has been applied to the payment of the personal debts of the other, or for any other cause—the consort may recover his or her claim out of the share of the community allotted to the debtor, or out of his or her private property. Personal claims which the consorts may have against each other do not bear interest, except from the day of the judicial demand. Gifts made by one of the consorts to the other are taken from the donor's share in the community, or out of his or her private property.

The widow's mourning, even if she has renounced the community, is chargeable to the heirs of her deceased husband, and its value is regulated according to the circumstances and position of the deceased.

The debts of the community are chargeable, one half to each of the consorts or to his or her heirs. The expenses of seals, inventories, sales of personal property, liquidation, public auction, and partition form part of such debts.

The wife is not liable for the debts of the community, either with respect to her husband or creditors, beyond the amount of the benefit she derived from it, provided she has made a good and faithful inventory, and has rendered an account both of what is contained in such inventory and of what has fallen to her in the partition. The husband is liable for the whole of the debts of the community contracted by him, but he has his remedy against his wife or her heirs for the half

of such debts. He is liable only for half of such personal debts of his wife that were chargeable to the community. The wife may be sued for the whole of the debts contracted by herself that have fallen into the community, but she has her remedy against her husband or his heirs for half of such debts. A wife personally liable for a debt of the community cannot be sued for more than the half of such debt, unless the obligation is joint and several.

A wife who pays a debt of the community beyond her half cannot recover the excess from the creditor, unless it is stated in the receipt that what she paid was for her moiety. A consort who, when a mortgage has been made upon the property allotted to him or to her, is sued for the whole of a debt of the community, has of right a remedy against the other consort or his or her heirs for the moiety of such debt.

These rules do not prevent one of the joint-sharers from paying more than the moiety, or even the whole of the debts of the community; but when one has paid more than his or her share, he or she has a remedy against the other.

All the above rules respecting husband and wife apply to the heirs of either, and such heirs have the same rights, and are subject to the same actions, as the consort would have been whom they represent.

RENUNCIATION OF THE COMMUNITY, AND ITS EFFECTS.

A wife who renounces forfeits her right to the property of the community, and even to the personal property which she herself brought to it. She has a right to retain wearing apparel and linen for her own use.

A wife who renounces has a right to recover:—
1. Real property belonging to her when not alienated, or the real property which has been bought as

reinvestment. 2. The price of her real property which has been alienated, and reinvested without her consent. 3. All the indemnities that may be due to her by the community.

A wife who renounces is discharged from all the debts of the community, both as regards her husband and as regards creditors. She, however, is answerable to creditors for debts in which she bound herself jointly with her husband, or when the debt is one which she contracted herself; saving, in such case, her remedy against her husband or his heirs. She may enforce all her claims against the goods of the community, or against the private property of her husband. Her heirs may do the same, except as regards linen and wearing apparel, and lodging and maintenance during the delays allowed for inventory and deliberation, which rights are purely personal to the surviving wife.

These rules apply even when one or both consorts have had children by a previous marriage. If, however, the confusion of personal property and debts gave to one of the consorts an advantage greater than that to which he or she is lawfully entitled, according to the rules regulating gifts inter vivos and wills, the children of the other marriage have a right to bring an action in curtailment (*en retranchement*).

OF COMMUNITY BY AGREEMENT.

[*Code Napoleon—Arts. 1,497—1,581.*]

Married persons may modify the legal community of property by any kind of agreement not contrary to law.

The principal modifications are:—1. That the community shall only comprise property acquired in common. 2. That the present or future personal property shall not be in common, or only partly so. 3. That it shall comprise the whole or part of

the real property, present or future, by changing it into personalty.* 4. That the consorts shall pay separately debts contracted before marriage. 5. That in case of renunciation, the wife may take back, free and clear from all burdens, whatever she brought into the community. 6. That the survivor shall have a stipulated benefit (*préciput*). 7. That the consorts shall have unequal shares. 8. That a community of all their property in general shall exist between them.

COMMUNITY CONFINED TO THINGS ACQUIRED IN COMMON.

When consorts stipulate that there shall only be a community of things acquired in common, they are respectively deemed to exclude their present and future debts, and their present and future personal property. The partition in this case is limited to things acquired in common, arising from their common industry, or from the savings out of the fruits and revenues of their private property. If the personal property, at the time of the marriage, or that which has accrued since, has not been authenticated by inventory or statement in due form, it is deemed to be property acquired in common.

PERSONAL PROPERTY WHOLLY OR PARTLY EXCLUDED FROM THE COMMUNITY.

Consorts may exclude from the community all their personal property which they at present or may in future possess. When they stipulate that they will respectively put part of it, to the amount of a certain sum or value, into the community, they are deemed to have reserved for themselves the remainder. This stipulation renders each a debtor

* Par voie d'ameublissement, hereafter explained.

to the community for the promised sum, and each must prove the payment of it.

Upon the dissolution of the community, each consort has a right to take back the value of the personal property that he or she brought into it at the time of the marriage; also that which has accrued to him or her since. The personal property that accrues to each of the consorts during the marriage must be authenticated by inventory; in default of an inventory of the personal property accruing to the husband, or of a document stating its value, he cannot claim it from the community. In the default of such inventory on the part of the wife, she, or her heirs, are admitted to give proof, either by documents or by witnesses, or even by common report, of the value of such personal property.

CLAUSE D'AMEUBLISSEMENT.*

This stipulation, by which the consorts, or either of them, bring into the community the whole or a portion of their real property, whether present or future, is called ameublisement. It is either definite or indefinite. It is definite when the consorts declare their intention to change to personalty and bring into the community a particular realty, for the whole, or to the amount of a given value. It is indefinite when it simply declares that they will bring into the community real property to a certain amount. The effect of this definite ameublisement is to convert the real property affected by it into the goods of the community as personal property. When the whole of the real property of the wife is so converted, the husband may dispose of it as of the other personalties of the community, and may alienate the whole. If the real property is only partly converted for a certain amount, the husband cannot alienate it without the consent of his

* Ameublier un immeuble: to change real property to personalty—an immeuble to a meuble.

wife; he may, however, mortgage it without her consent; but only to the extent of the portion rendered moveable.

Indefinite ameublisement does not confer upon the community the ownership of the real property affected thereby; its effect is merely to oblige the consort who has so agreed, to include in the bulk, when the community is dissolved, part of the property to the amount of the sum which he or she has promised. The husband, without the consent of his wife, cannot alienate, in whole or in part, the real property encumbered by indefinite ameublisement; but he may mortgage it to the amount rendered personal (moveable).

The consort who has converted an estate into personalty has a right, when the partition takes place, to retain it by deducting from his or her share its actual value. His or her heirs have the same right.

SEPARATION OF DEBTS.

The stipulation by which consorts agree that each shall pay separately his or her personal debts binds them, when the community is dissolved, to refund respectively debts which are proved to have been paid by the community. The obligation is the same, whether an inventory has been made or not; but if the personal property brought by the consorts has not been authenticated by an inventory, or an authentic statement made before marriage, the creditors of either consorts may, without distinction, sue for payment out of the personal property not entered in the inventory, as well as out of all the other goods of the community. The same rule applies to the property that may have accrued to the consorts during marriage. When the consorts bring into the community a certain sum or a certain property, such a contribution implies a tacit agreement that it is not encumbered with debts incurred before marriage. The clause

of separation of debts does not exempt the community from liability to pay interest and arrears due since the marriage.

When the community is sued for the debts of one of the consorts, who is declared by the contract to be free and clear from all debts incurred before marriage, the other consort has a right to an indemnity, to be taken from the share in the community which belongs to the indebted consort, or from his or her private property; and in case of insufficiency, such indemnity may be sued for, as on a warranty, against the father, mother, ascendant, or guardian who made the declaration that such property was free and unencumbered. This warranty may even be sued upon by the husband during the community, if the debt originated with the wife; but, in such case, warrantor has a right to be reimbursed by the wife or her heirs after the dissolution of the community.

RIGHT OF THE WIFE TO TAKE BACK, UNENCUMBERED, WHAT SHE BROUGHT INTO THE COMMUNITY.

A wife may stipulate that, in case of renunciation of the community, she shall take back a whole or part of what she brought into it, either at the time or during the marriage; but such stipulation can neither extend beyond things formally specified, nor for the benefit of persons other than those mentioned. Thus the right of taking back the personal property which the wife has brought at the time of her marriage does not apply to that which has accrued to her during the marriage. Such right does not extend to the children, and that granted to the wife and children does not extend to other heirs. In no case can the property be taken back without deducting the private debts of the wife that have been paid out of the community.

PRÉCIPUT* BY AGREEMENT.

This stipulation, by which the surviving consort is authorised to take, before any partition, a certain sum, or a certain quantity of personal effects in kind, takes effect in favour of the surviving wife only when she has accepted the community; unless, in the marriage contract, such right has been reserved to her even in the event of renunciation. In default of such reservation, the préciput can only be taken out of the divisible bulk of the community, and not out of the private property of the predeceased consort. Préciput is not regarded as a benefit subject to the formalities of gifts inter vivos, but as a marriage agreement.

When the community is dissolved by death, the préciput may be at once claimed; but in cases of judicial separation, the right of préciput cannot be enforced, although it is preserved in cases of survivorship by the consort who obtained the separation. If the right belongs to the wife, the sum, or the thing constituting the préciput, remains with the husband, on his giving security. The creditors of the community have always a right to enforce a sale of the effects comprised in the préciput; and in this case the other consort has his or her remedy.

CLAUSES BY WHICH UNEQUAL SHARES IN THE COMMUNITY ARE ASSIGNED TO THE CONSORTS.

Consorts may depart from the equal division established by law, either by giving to the surviving consort, or his or her heirs, a share in the community amounting to less than the half; or by giving the survivor a fixed sum in lieu of every claim upon the community; or by stipulating that

* Benefit stipulated by will or by law in favour of one of several co-heirs, or a benefit stipulated by marriage settlement in favour of the surviving husband or wife.

the entire community, in certain cases, shall belong to the surviving consort, or to one of the consorts only.

When it is stipulated that one of the consorts, or his or her heirs, shall be entitled only to a certain share in the community, as a third or a fourth, the consort to whom this limitation applies, or his or her heirs, is liable only for the debts of the community in proportion to such share. The covenant is void if it binds the consort thus limited, or the heirs, to bear a greater share, or if it exonerates them from bearing a share in the debts equal to that which they take in the assets. When it is stipulated that one of the consorts, or his or her heirs, shall be entitled only to a certain sum in lieu of all right in the community, this stipulation binds the other consort or heirs to pay the sum agreed upon, whether there is gain or loss. If the clause binds only the heirs of one of the consorts, such consort, in case of survivorship, has a right to a half-share in the community.

Husbands or their heirs, who retain the whole community, are liable for all the debts. The creditors, in such case, have no right of action against the wife or her heirs. If it is the surviving wife who, in consideration of a stipulated sum, has a right to keep the community against the heirs of the husband, she has the option of either paying them such sum, and remaining liable for all the debts, or of renouncing the community, and abandoning to the heirs of the husband both the property and the encumbrances.

Consorts may stipulate that the whole of the community shall belong to the survivor, or to one of them only, saving the right of the heirs of the other to take back what had been brought into the community by the consort they represent. Such a stipulation is deemed a simple marriage covenant, and is not subject to the rules and formalities applicable to gifts inter vivos.

GENERAL COMMUNITY.*

Consorts, by their marriage contract, may establish a general community of their real and personal property, present and future, or of all their present property only, or of all their future property only.

The preceding provisions do not precisely limit all the stipulations by which the community may be modified. Consorts may enter into such agreements as they please, provided they do not infringe upon the law. Nevertheless, in the case where there are children by a previous marriage, any agreement in violation of the rules regulating "gifts inter vivos" and "Wills" are void with regard to all that exceeds the disposable portions; but the profits and savings of the community, although unequal, are not considered an advantage made to the prejudice of the children of the first marriage.

Community by agreement is subject to the rules of legal community in all cases when there is no express or implied derogation of the law.

AGREEMENTS EXCLUDING COMMUNITY.

When the consorts, without subjecting themselves to the dotal system, stipulate that there shall be no community, or that they shall remain separate as to property, the effect of such stipulation is regulated as follows:—

I.—MARRYING WITHOUT COMMUNITY.

This stipulation does not give the wife the right to administer her property, nor to receive the fruits thereof, which are deemed to be brought by her to her husband for household expenses. The husband retains the management of the real and personal property of his wife, and as a conse-

* A titre universel.

quence, the right to receive all the personal property she brings with her, or which falls to her during marriage, saving the restitution he is bound to make after the dissolution of the marriage, or after a separation of property has been legally adjudicated. If amongst the personal property brought as dowry by the wife, or property which accrues to her during marriage, there are things that cannot be used without being consumed, a valuation must be annexed to the marriage contract, or an inventory made at the time the property accrues to her, and the husband is bound to refund the value. The husband is responsible for all the liabilities incident to the usufruct.

It may be stipulated in the marriage contract that the wife, for her support, shall receive annually a certain portion of her revenues, for her maintenance and personal requirements, on her own acquittance. The real property settled in dowry by the wife is alienable, but not without the consent of the husband, and on his refusal, without the authority of the Court of First Instance.

II.—SEPARATION OF PROPERTY.

When the consorts stipulate by the marriage contract that they shall be separate as to property, the wife retains the entire management of both her real and personal property, and the free use of her revenues. Each of the consorts contributes to the expenses of the household, according to the covenants contained in their marriage contract; and if there is no agreement, the wife contributes to such expenses one-third of her income. In no case, nor by virtue of any stipulation, can the wife alienate her real property without the special consent of her husband; or, on his refusal, without being judicially authorised. Every general power given to the wife to alienate real property, whether given by marriage contract or during marriage, is void.

When the wife, who is separate as to property, has allowed her husband to use it, the latter is only bound, either upon the demand which his wife may make, or upon the dissolution of the marriage, to give up all existing fruits; but he is not accountable for those which, up to such time, have been consumed.

DOTAL SYSTEM.

Dowry, as generally understood, is the property which the wife brings to her husband to defray expenses incident to marriage. Under the dotal system, all that she settles, or that which is settled upon her, in the marriage contract, is dotal, unless there is a stipulation to the contrary.

SETTLEMENT OF THE DOWRY.

All the present and future property of the wife, or all her present property only, or part of her present and future property, or even a special thing, may be settled upon her as dowry. A settlement, in general terms, of all the property of the wife, does not include property that may accrue to her. A dowry can neither be settled nor increased during marriage.

If parents settle a dowry conjointly, without specifying their respective shares, it is deemed to be by equal portions. If the dowry is settled by the father only, in the name of both parents, the mother, although present at the contract, is not bound, and the father is made responsible for the whole dowry. If a surviving parent settles a dowry, in respect of paternal and maternal property, without specifying the shares, the dowry shall be taken first, to the amount of the claims of the future husband, from the property of the deceased parent, and the residue out of the property of the survivor.

Although the daughter on whom a dowry has

been settled by her parents has property in her own right, of which they have the usufruct, the dowry is taken from the property of the parents if there is no stipulation to the contrary. Those who settle a dowry are bound to guarantee it. Interest upon a dowry runs from the day of the marriage against those who settled it, unless there is a stipulation to the contrary.

HUSBANDS' RIGHTS OVER PROPERTY SETTLED IN DOWRY.

The husband has the sole control of the dotal property during marriage. He has the sole right to sue debtors and holders of the property, to receive all fruits and interest, and all reimbursements. Nevertheless, it may be stipulated in the marriage contract that the wife shall receive annually, on her own discharge, a part of her income for her maintenance and personal wants. The husband is not bound to find security for the dowry unless it is so stipulated in the marriage contract. If the dowry, or part of it, consists of personal property valued in the contract, and there is no declaration that such valuation does not imply a sale, the husband becomes the owner, and is only responsible for the price stated in the valuation. The valuation of real property settled in dowry does not confer ownership upon the husband, unless it is expressly declared.

Real property bought with the dotal money is not dotal if no condition for investment has been stipulated in the marriage contract. The same rule applies with regard to real property, given in payment of the dowry settled in money. Real property settled in dowry cannot be alienated or mortgaged during marriage either by the husband or by the wife, or by both jointly, except under the following circumstances:—A wife may, with the consent of her husband, or on his refusal, by judicial authority, give her dotal property for the settlement in life of children which she had by a previous marriage;

but if she is only judically authorised, she must reserve the usufruct for her husband. She may also, with the consent of her husband, give her dotal property for the settlement of the children of their marriage. Real property settled in dowry may be alienated when so stipulated in the marriage contract. It may be also alienated with the permission of the Court, by public sale, to release the husband or wife from prison; to supply maintenance to members of the family entitled by law; to pay the debts of the wife, or of those who have settled the dowry, when such debts are proved to have been incurred before the marriage contract; to make substantial repairs necessary for the preservation of the real property settled in dowry; finally, when such realty is jointly possessed by third parties, and is not divisible. In all those cases, the excess of the proceeds of the sale above the requirements remains dotal, and is reinvested as such for the benefit of the wife.

Real property in dowry may be exchanged, with the wife's consent and with the authority of the Court, on proving the advantage of the exchange, for another property of like value, or of a value not less than four-fifths of the former property. In this case the property received in exchange is dotal; the excess of the price, if any, is also dotal, and must be reinvested as such for the benefit of the wife.

If, in cases not included in these exceptions, the wife or the husband, or both jointly, alienate the dotal property, the wife or her heirs may, after dissolution of marriage, have the alienation cancelled, without right of prescription being admissible during the marriage. The wife has the same right in the event of separation of property. The husband may have the alienation cancelled during marriage, but he is liable for damages to the purchaser, unless he has declared in the contract of sale that the property sold was dotal.

No prescription is admissible during marriage

against real property, dotal, when not declared alienable by the marriage contract, unless such prescription began before marriage; nevertheless, prescription is admissible after separation of property, whatever may be the time when the prescriptive right commenced.

The husband is bound, in respect of all dotal property, by all the obligations of a usufructuary. He is responsible for all prescriptions acquired against the property, and deteriorations caused by his negligence. If the dowry is endangered, the wife may sue for separation of property, as previously stated.

RESTITUTION OF DOWRY.

If the dowry consists of real property, or personalty not valued in the marriage contract, or valued with a declaration that the valuation does not deprive the wife of ownership, the husband or his heirs may be compelled to restore it immediately after dissolution of marriage. If it consists of a sum of money, or personalty valued in the contract, without declaration that such valuation does not confer ownership upon the husband, the restitution cannot be exacted till one year after the dissolution of marriage.

If the personalty remaining the property of the wife has partly perished, without the fault of the husband, he is only bound to return that which remains, and in the condition in which it is found. The wife may, in all cases, take back linen and wearing apparel for her use, a deduction being made of their value, if valued in the marriage contract.

If the dowry comprises bonds or annuities which have been extinguished, or been subject to deductions, without the negligence of the husband, he is not responsible for them, but is discharged by giving up the deeds. If a usufruct has been settled in dowry, the husband or his heirs are bound, at

the dissolution of marriage, to give up only the right of usufruct; but not the fruits which accrued during the marriage.

If the marriage has lasted ten years after the lapse of the term assigned for the payment of the dowry, the wife or her heirs may recover it after the dissolution of marriage, without being bound to prove that the husband had received it; unless it can be proved that he had unsuccessfully sued to obtain payment.*

If the marriage is dissolved by the death of the wife, the interest and fruits of the dowry to be returned go for the benefit of her heirs from the day of the dissolution. If it is dissolved by the death of the husband, the wife has the option of demanding the interest of the dowry during the year of mourning (*l'an du deuil*), or of claiming maintenance during the same period, at the expense of her husband's succession; but in both cases, her lodgings during the year and her mourning must be supplied to her by the succession, and without being deducted from interest due to her.

On the dissolution of marriage, the fruits of the real property in dowry are divided between the husband and wife, or their heirs, in proportion to the length of time the marriage lasted during the last year. The year in this case runs from the day on which the marriage was celebrated. The wife and her heirs have no privilege for the recovery of the dowry over creditors having a prior mortgage.

If the husband was insolvent, and had no trade or profession when the father settled a dowry upon his daughter, the latter is only bound to return to her father's succession the right of action which she has against her husband for the recovery of her dowry. If the husband became insolvent after the marriage, or if he had a trade or profession which made up for the want of property, the loss of the dowry falls solely on the wife.

* This rule applies, under the dotal system, both to cases of judicial separation of property, and to cases of dissolution of marriage; death.

PARAPHERNALIA.

All the wife's property that has not been settled in dowry is her paraphernalia. If all her property consists of paraphernalia, and if there is no clause in the marriage contract that she shall share the expenses incident to marriage, the wife must contribute one-third of her income. The wife has the management and use of her paraphernalia; but she cannot dispose of such property, nor become party to a suit in respect of it, without the authority of her husband; or, on his refusal, without judicial authority.

If the wife gives her husband power to manage her paraphernalia, 'on condition of accounting to her for the fruits, he becomes as responsible as any other mandatory. If the husband has used the paraphernalia without such power, and without opposition on the wife's part, he is liable, at the dissolution of the marriage, or at the first request of his wife, for the existing fruits, but not for those which have been consumed up to that time. If the husband has used the paraphernalia in spite of his wife's opposition, he is accountable to her for all existing fruits, as well as for those which have been consumed.

A husband who uses the paraphernalia of his wife is bound by all the obligations of a usufructuary.

Consorts in submitting to the dotal system, may nevertheless stipulate for community of property acquired by them, and such acquisitions are regulated in the manner previously stated.*

* See "Community by Agreement," p. 525.

DICTIONARY
OF
FRENCH LEGAL TERMS

APPEARING IN THE

FOREGOING TREATISE AND TEXT, FOR THE
MAJORITY OF WHICH CONCISE ENGLISH EQUIVALENTS
DO NOT EXIST.

DICTIONARY OF FRENCH LEGAL TERMS.

Absence—When a person has been absent and not heard from for more than four years, he may be declared **ABSENT** by the Court, and his heirs may obtain provisional possession of his property.

A capital variable—see *Société à capital variable*.

A caution—see *Acquit à caution*.

A cueillette—In relation to the contract of affreightment, signifies when the cargo is taken on condition that the master succeeds in completing his cargo from other sources.

A forfait—In relation to the contract of affreightment, signifies the gross sum agreed upon for the cargo shipped, whether its weight is ascertained or not.

Accepté—Accepted.

Accepteur par intervention means Acceptor for honour.

Acquit à caution—Certain goods pay higher export duties when exported to a foreign country than when they are destined for another French port. In order to prevent fraud, the Administration compels the shipper of goods sent from one French port to another to give security that such goods shall not be sent to a foreign country. The certificate which proves the receipt of the security is called *acquit à caution*.

Acte authentique—see Notarial Deeds.

Acte de cession—see “Bills of Lading.”

Acte de Commerce—Commercial transactions. Defined and enumerated in Arts. 632 and 633 of the Code of Commerce.—The distinction between transactions that are commercial and transactions that are not, is important, as it is this difference that determines the jurisdiction of the *Tribunal de Commerce*.

Acte de francisation—The certificate of registration of a ship, by virtue of which its French nationality is certified.

Acte de protestation—*see* chapter on Bills.

Acte de perquisition—*see* chapter on Bills.

Actes exécutoires—Judgments and notarial deeds, by virtue of which execution can issue, and the sale of the goods attested thereby be ordered—*see* Notarial Deeds.

Acte extrajudiciaire—Document served by *huissier* upon the demand of one party upon another party without legal proceedings.

Acte notarié—*see* *Acte Public*.

Acte Public—This term is sometimes applied to an *acte authentique*—*see* *Acte authentique*.

Acte sous seings privés—*see* *Sous seings privés*.

Actions civiles—Actions at law. This expression is used in contradistinction to *actions publiques*, which is the name given to all proceedings instituted by the *Ministère Public* for enforcement of penalties. Art. 601 provides that, save in the exceptions contained in Art. 595, *actions civiles*, to which the bankrupt is a party, shall never be prosecuted by the *Ministère Public*.

Addition—*see* *Certificat d'addition*.

Adjoints—Members of the Corporation of *Agents de Change*, who compose with the *Syndic*, the *Chambre Syndicale*.

Administration—General term applied to the general body of public functionaries charged and connected with the executive power.

Administration des Finances—Name given to all the offices which constitute the *Ministère des Finances*.

Affreteur is the merchant or consignor who hires a ship.

A fonds perdus—*see* *Fonds perdus*.

A forfait—The name given to an executory contract, in which the consideration consists of a definite sum. The risk is cast thereby entirely upon the party who undertakes the execution of the contract, which cannot in any case give occasion for an accounting between the parties.

A forfait & sans garantie—Formula used in endorsing, equivalent to "without recourse."

Agent de Change—*see* *Stockbrokers*.

Agréé—Solicitors practising solely in the Tribunals of Commerce.

A grosse aventure signifies Bottomry.

Ajournement is the document pursuant to which an action or suit is commenced, equivalent to the writ of summons in England. Actions, however, are in some cases commenced by *requête* or petition.

Antichrèse is the pledging of *real* property. It can only be effected by writing. By this contract the creditor acquires only a right to the *fruits* of real property, on condition that he deducts them annually from the interest, if any be due to him, and afterwards from the capital. The creditor is bound, if it is not otherwise stipulated, to pay the taxes and annual expenses of the property which he holds in *antichrèse*. He must in like manner, under pain of damages, provide for its maintenance and for all useful and necessary repairs; but he has his right to deduct from the fruits all such expenses.

The creditor does not become owner of the realty by the mere default of payment at the time agreed upon. All clauses to the contrary are void. His only remedy is to sue for the sale of the property according to law. (*See Appendix*).

Apports—When an individual enters into a partnership, he necessarily contributes to the partnership funds, either by paying a sum of money or by bringing in its equivalent in security or value of some description, or his services.

Apports en nature—That which a partner brings into the partnership other than in cash; for instance, securities, realty or personalty, cattle, stock, or even his personal ability and knowledge.

A prime liée—*see Prime liée*.

Arbitre is an official referee. In most cases the *arbitre* is a retired barrister or solicitor. His duty consists in investigating cases which the *Tribunal* refers to him. The list of the *arbitres* is drawn up every year by the *President* of the *Tribunal of Commerce*, and no *arbitre* can be appointed who is not upon such list.

Archives des Conseils de prudhommes.—The office of the *Conseils de prudhommes*.

Arrêt is the French term for judgments given by the Courts of Appeal and the Court of Cassation. The decisions of the other Courts are called *jugements*.

Arrêté—Order emanating from one of the executive offices of the State.

Arrondissement is one of the sub-divisions of a department—*see Préfecture*.

Association commerciale en participation—*see Société en participation.*

Association en participation—*see Société en participation.*

Associé en nom—In a *Société en commandite*, an *associé en nom* is one who is liable for the engagements of the undertaking to the whole extent of his property. This expression arises from the fact that the names of the *associés* so liable figure in the firm-name or form part of the *société en nom collectif*.

A terme—Time bargains on the Stock Exchange.

A titre gratuit—Without valuable consideration.

A titre onéreux—With valuable consideration.

Au besoin chez Mr.—Bill payable in case of need at address of third party.

Au porteur—To bearer.

Aval—Guarantor or surety for payment of a bill.

Avaries dommages—Expenses directly resulting from damage to ship or cargo.

Avaries-frais—Expenses indirectly resulting from damage to ship or cargo, such as making port.

Avocats—(Barristers)—*see* chap. I.

Avocat-général—*see* chap. I.

Avoués—(Solicitors) *see* chap. I.

Banqueroute simple and Banqueroute frauduleuse—

The French word *banqueroutier* should not be confounded with the English word bankrupt. The word *banqueroutier* includes the idea of fraud or culpability.

The *banqueroute* is *simple* or *frauduleuse* according to the degree of the offence. The latter is punishable by imprisonment with or without hard labour.

Batonnier—The *batonnier* is the chief of the French bar in its various centres, and presides in the council of discipline.

Bénéfice de division—The immunity of a joint guarantor for all but his own proportion of the debt guaranteed. Joint guaranty is cast by law upon the heirs of a debtor, and they may invoke the *bénéfice de division*. In effect, equivalent to the “right of contribution.”

Bénéfice de discussion—The right of a guarantor to exact that his creditor shall exhaust his recourse against the principal debtor before having recourse against the guarantor himself.

Bénéficiaire—The person in whose favour a promissory note or a bill of exchange is payable; or any person in whose favour a contract of any description whatsoever is executed,

Besoin—*see Au besoin.*

Billet à domicile—*see* chapter on Bills.

Billet à ordre—*see* Promissory Note.

Bordereau—A note enumerating the purchases and sales which may have been made by a broker or stockbroker. This name is also given to the statement given to a banker with bills for discount or coupons to receive.

Bordereau d'achat—*see Bordereau.*

Bourse—*see* chap. on Stockbrokers.

Bourse de Commerce—*see Bourse.*

Brevet d'importation—A patent taken out in France coming from abroad.

Brevet de perfectionnement—A patent for improvements or changes.

Bréveté sans garantie du Gouvernement—The law requires that these words be affixed to every patented article, to express the fact that the Government in no way guarantees the authenticity of the invention patented, but in practice the letters S. G. D. G. are employed only.

Broches—Bills of small amount.

Bulletin des Lois—The official sheet which publishes the laws and decrees. This publication constitutes the promulgation of the law or decree.

Bureau de l'Enregistrement—The offices occupied by the officials charged with the collection of the stamp duties.

Bureau des hypothèques—Mortgage registration office.

Cahier des charges—Terms of an executory contract accepted upon auction or awarded by Government.

Caisse de Depots et Consignations—A Government institution established for the custody of moneys required to be deposited in the course of legal proceedings or in relation thereto. Amounts so deposited bear interest at the rate of 3 per cent. per annum, but no interest is payable for the first sixty days following deposit. The funds thus received serve for loans to *Communes* at moderate rates.

Canton—Subdivision of a department. *See Préfecture.*

Capital variable—*see Société à capital variable.*

Carence—A *procès-verbal de Carence* is a document setting

out that the *huissier* attended to issue execution upon a judgment, but found nothing upon which to levy.

Cassation—The Court of Cassation is the Supreme Court of Appeal in France. *See Procédure en Cassation*, and also page 8 *et seq.*

Caution judicatum solvi—Security for costs.

Cautionnement—The sum of money which every Government functionary, *avoué*, *notaire*, etc., must, before entering upon the exercise of his functions, deposit with the Government. This amount is intended to secure the reimbursement of sums entrusted to such functionaries, or even to indemnify parties who have suffered from their negligence.

Certificat d' addition—Modification of a patent.

Certificats de coûtume are certificates given by a foreign lawyer, establishing the law of the country to which he belongs, upon one or more fixed points. These certificates can be produced before the French Courts, and are received as evidence in lawsuits upon questions of foreign law.

Cessation de paiements—Suspension of payments in Bankruptcy.

Cession de biens—General assignment for the benefit of creditors made by a party who is not a merchant. He is not discharged thereby, except to the extent to which he has paid out of the proceeds of his property. The principal object of this proceeding was to relieve a debtor from imprisonment; but since imprisonment for debt has been abolished, this proceeding has no longer anything but a historical interest.

Chambre des Requêtes—*see Procédure en Cassation*.

Chambre Civile—*see Procédure en Cassation*.

Chambre du Conseil—Room to which the Court retires for deliberation.

Chambre Syndicale—All Government functionaries (*avoués*, *notaires*, *huissiers*, *agents de change*, etc.) practising in the same town elect from among themselves a certain number of members who compose a Court of Discipline, or Committee empowered to enforce upon all the members of the Corporation the observance of its professional rules. These Committees are termed *Chambre des notaires*; *Chambre des avoués*, etc. That of the *Agents de Change* is termed *Chambre Syndicale*.

Chancelier du Consulat is the title given to the head of the clerical department in the office of a consulate.

Chargeur—see *Affreteur*.

Chef—Overseer, i.e., an *employé* who has *employés* under him.

Chef-lieu d'Arrondissement—Principal town of each *arrondissement*, the seat of the *sous-Préfecture*.

Chef-lieu de Département—Principal town of each department, the seat of the *Préfecture*.

Clause potestative—The name given to the clause whereby one party to a contract reserves to himself the right to annul it.

Code Civil—Comprises the whole of the thirty-six laws regulating personal and domestic relations and property.

The edition of 1804 was intitled *Code Civil des Français*; that of the 3rd September, 1807, the *Code Napoléon*; that of the 30th August, 1816, the *Code Civil*. A decree of the 27th of March, 1852, re-established the title of *Code Napoléon*: but since the 4th September, 1870, the National Assembly, the Court of Cassation, and the other Courts and tribunals in France, have substituted the term *Code Civil* in all laws and judgments.

Code de Commerce—Previous to the reign of Louis XIV., no special code or body of laws existed in relation to mercantile or maritime commerce. During the above reign, however, trade commenced to flourish, and the imperfections of the existing laws became manifest, and during the ministry of Colbert, the celebrated *ordonnance* of the month of March, 1673, was drawn up, comprising enactments upon inland commerce, and the most important mercantile contracts.

This *ordonnance*, composed in great part by a merchant named Savary, contains 12 *titres*, or headings, corresponding principally with the *titres* of the existing Commercial Code.

In the same reign, and during the same ministry, the *ordonnance* of August, 1861, upon maritime law was published. It was divided into five books, and comprised the following subjects:—1. Admiralty; 2. Of ships and seamen; 3. Of maritime contracts; 4. The regulation of ports; 5. Fisheries.

This *ordonnance* was received with enthusiasm, and generally adopted throughout Europe.

A list of the authors and of the works, both French and foreign, published before the promulgation of the Code of Commerce, will be found in pp. 5, 6 of the Commentary upon the French Code of Commerce, by Rivière. Amongst them appears "Trade Laws, compiled from the Latest Authorities," by Ratcliffes, London, 1787, 2 vol. in 8^a.

Notwithstanding the care with which commercial law was codified by the *ordonnances* of 1673 and 1681, a revision of this division of the law became called for, and in 1787 a commission was instituted to revise these *ordonnances* and mercantile law in general. The labours of this commission were interrupted during the Revolution, and it was not until the 3rd April, 1801, that a new commission was organised to draw up a project for a Code of Commerce. This project was communicated to the Tribunals of Commerce, the Court of Cassation, and to the Courts of Appeal, and subsequently revised and discussed in the Council of State, and alternately adopted by the Corps Législatif.

Pursuant to Art. 1 of the law of the 15th September 1807, the provisions of the Code of Commerce were decreed to come into force on the 1st January, 1808.

The modifications and changes which subsequent legislation has caused to be incorporated and added to the original text, will be found in the portion of this treatise containing translations of the Code of Commerce, and of the various mercantile laws in force at the present time.

Code d'instruction criminelle—Code indicating the procedure in criminal cases.

Code de Procédure—Code which determines and controls the practice in civil and mercantile cases.

Code Napoléon—see *Code Civil*.

Commandement is a writ served by *huissier*, pursuant to a judgment or to an executory notarial deed. Its object is to give notice to a debtor that if he does not pay the sum to which he has been condemned by the judgment, or which he engaged to pay by a notarial deed, his property will be seized and sold. In the cases when a seizure of personal property is contemplated, the *commandement* must be served twenty-four hours before seizure. In the case of real property, it must be made thirty days before seizure.

Commanditaire—see *Commandite*.

Commanditaire par actions is a partner who is only bound to the extent of his venture in a *Société par actions*.

Commandite—The sum invested in a partnership by a special partner who is called a *Commanditaire*.

Commandite par actions—see *Société en commandite par actions*.

Commandite par intérêts—Special partnership in which the capital is not represented by negotiable stock.

Commandite simple—see *Société en commandite simple*.

Commissaire—*Commissaires* are persons who receive from a meeting of shareholders a special authority, viz., that of checking and examining the accounts of a manager or of valuing the *apports en nature*. This name is also applied to a judge who receives from a Court a special mission—for instance, to institute an inquiry or to examine certain books, or to supervise the operations of a bankruptcy.

Commissaire de Police—Police Justice—Magistrate.

Commissaire-Juge—see *Juge-Commissaire*.

Commissaires - priseurs are auctioneers, possessing the exclusive right of selling personal property at public sales in the towns in which they are established, and they possess the same right concurrently with notaries, *greffiers* and *huissiers* in the rest of the *arrondissement*. They also undertake valuations.

They are 80 in number in Paris. *Commissaires-priseurs* can be appointed in all places which contain more than 5,000 inhabitants. They are appointed by the chief of the State, upon the presentation of their predecessors in office. They must serve the same apprenticeship as *huissiers*, viz., have accomplished a *stage* of two years in the office of an *avoué*, notary or *huissier*, or three years in that of a *greffier*. They are governed by a *chambre de discipline*.

Commission rogatoire—Commission for the examination of witnesses.

Commissionnaire—Commission agent (see text of Code).

Commissionnaire en Marchandises—Commission agent (see text of Code).

Communauté—see *Communauté de biens*.

Communauté de biens—By *communauté* is meant the property which is held in common by the married parties who have adopted the *régime* of the *communauté de biens*. (See Appendix.)

Commune—see *Préfecture*.

Communication—The production of a merchant's books by delivering them either to a person designated by the Court, or to his adversary, to be examined in all their parts, and as shall be deemed necessary to the suit.

Compromis—Submission to arbitration.

Compte de retour—Expenses of return of unpaid bills.

Conciliation is the formality to which intending litigants are subjected in cases brought before the *juges-de-paix*. The judge convenes the parties, and endeavours to reconcile them. Should he not succeed, the case proceeds. In criminal and commercial cases the preliminary of *conciliation* does not take place.

Concordance between the Republican and the Gregorian Calendar.

Concordance of the Months.

| | | | | |
|---------------|-----|-----|-----|-----------------|
| 1 Vendémiaire | ... | ... | ... | 22nd September. |
| 1 Brumaire | ... | ... | ... | 22nd October. |
| 1 Frimaire... | ... | ... | ... | 21st November. |
| 1 Nivôse | ... | ... | ... | 21st December. |
| 1 Pluviôse | ... | ... | ... | 20th January. |
| 1 Ventôse | ... | ... | ... | 20th February. |
| 1 Germinal | ... | ... | ... | 22nd March. |
| 1 Floréal | ... | ... | ... | 21st April. |
| 1 Prairial | ... | ... | ... | 21st May. |
| 1 Messidor | ... | ... | ... | 20th June. |
| 1 Thermidor | ... | ... | ... | 20th July. |
| 1 Fructidor | ... | ... | ... | 19th August. |

Concordance of the Years.

| | | | | | |
|---------------|-----|-----|-----|-----|------|
| An (year) II. | ... | ... | ... | ... | 1793 |
| An „ III. | ... | ... | ... | ... | 1794 |
| An „ IV. | ... | ... | ... | ... | 1795 |
| An „ V. | ... | ... | ... | ... | 1796 |
| An „ VI. | ... | ... | ... | ... | 1797 |
| An „ VII. | ... | ... | ... | ... | 1798 |
| An „ VIII. | ... | ... | ... | ... | 1799 |
| An „ IX. | ... | ... | ... | ... | 1800 |
| An „ X. | ... | ... | ... | ... | 1801 |
| An „ XI. | ... | ... | ... | ... | 1802 |
| An „ XII. | ... | ... | ... | ... | 1803 |
| An „ XIII. | ... | ... | ... | ... | 1804 |
| An „ XIV. | ... | ... | ... | ... | 1805 |

In the Republican Calendar the year is divided into 12 months, and the month into three *décades*.

The *décade* is composed of 10 days: *primidi*, *duodi*, *tridi*, *quartidi*, *quintidi*, *sextidi*, *septidi*, *octidi*, *nonidi*, *décadi*.

The era commenced on the 22nd September, 1792, the date of the proclamation of the Republic.

Concordat (composition)—Compromise effected by a bankrupt with his creditors by virtue of which the bankrupt engages to pay within a certain time a certain proportion of his debts, and by which the creditors agree to discharge the whole of their claims, in consideration for the same.

Connexité—see also *Déclinatoires*. *Connexité* exists when two actions are pending which, although not identical as in *lis pendens*, are so nearly similar in object, that it is expedient to have them both adjudicated upon by the same judges.

Conseil d'Etat—The *Court of Appeal* from the *Conseil de Préfecture*. It has other functions of an administrative character.

Conseil de famille—Whenever it becomes necessary to appoint a guardian of a minor, the nearest relations or the most intimate friends are called together under the direction of the *juge-de-paix*. This meeting constitutes a *Conseil de famille*, and has capacity to name a guardian.

The *Conseil de famille* is also summoned in order to give its opinion about the *interdiction* of an insane person; moreover certain acts cannot be performed by guardians in the course of their functions without the authorisation of the *Conseil de famille*.

Conseil de Préfecture—In each *Préfecture* there are three judges nominated by the Government, who have jurisdiction over all cases in which the Prefect or his representative is a party. These judges are called *Conseillers de Préfecture*, and the *Tribunal* which they compose is called *Conseil de Préfecture*.

Conseils de Prudhommes are a species of trade tribunal, charged with settling differences between masters and workmen. They endeavour, in the first instance, to "conciliate" the parties. In default, they *adjudicate* upon the questions in dispute. Their decisions are final up to 200 fs. Appeals lie to the *Tribunals of Commerce* beyond that amount.

These Courts exist in manufacturing towns, such as Paris, Lyons, etc. The *Conseil* is composed of manufacturers and workmen in equal proportions; the minimum is six, not including the president and vice-president.

The *Prudhommes* are elected for six years. The masters elect the masters, and the workmen the workmen. An elector must have attained the age of 25 years, and have belonged to his trade for five years. Candidates for election must have attained the age of 30 years.

The duties of the *Prudhommes*, like those of the judges of the Tribunals of Commerce, are purely honorary.

In cities where *Conseils de Prudhommes* do not exist, the *juges-de-paix* exercise jurisdiction.

Conseil judiciaire—Any person who, by his extravagant expenditure, out of proportion to his resources, threatens to thereby squander his property, may, at the request of a relation or near friend, be submitted, by virtue of an order to that effect, to the wardship of a third person called *Conseil judiciaire*. Without the approval of such *Conseil judiciaire*, he cannot validly perform any act nor execute any document that could constitute a charge upon his estate.

Conseil Municipal—Council elected by universal suffrage for the administration of each *commune*.

Conseillers—The judges composing the Courts of Appeal are called *Conseillers*.

Conseiller Général—Each *Canton* (see *Préfecture*) nominates a *Conseiller Général* for a term of three years. The *Conseillers Généraux* meet in the so-called *Conseil Général*, which forms a Council to the *Préfet* of the department, votes the special taxes for the department, and administers the roads and the institutions belonging to the same.

Conservatoire des Arts et Métiers—A public establishment which the Government has opened at Paris, in which Art and Industry are taught gratuitously. Here are exposed also models and maps of use to illustrate the progress of national art and national industry.

Constat d'huissier—An affidavit made by *huissiers* setting forth the appearance, form, quality, colour, &c., of any article upon which a suit depends.

Contrainte par corps means imprisonment for debt, now abolished—see p. 23 and Index.

Contrat à la grosse—see *Bottomry*. (Index.)

Contrat de change—see chapter on Bills.

Contrestaries—see *Surestaries*.

Contribution foncière—Taxes on real estate.

Corps certains—This expression is employed in contradistinction to objects which are not specific by their nature, as a certain quantity of wheat or hay. A *corps certain* is the object itself in relation to which an agreement has been entered into, and which cannot be replaced by any other object, as a horse or a ship, &c.

Correctionnel—see *Tribunaux Correctionnels*.

Coulissiers are intermediate agents who undertake the negotiation of Stock Exchange securities, and consequently usurp the functions of stockbrokers. Their existence is not legally recognised, but is nevertheless tolerated.

Courtiers—Brokers.

Couverture is the deposit (or “cover”) made by the client in the hands of the broker, either of a sum of money or of securities, in order to guarantee the broker for the payment of the securities which he purchases for his client.

Créanciers présumés.—When claims against a bankrupt have not been definitely accepted by the *syndic*, such creditors are called *créanciers présumés*, because their rights have not been definitely admitted.

Credit Foncier is a peculiar method of borrowing money in France on the security of landed property. It was established by an edict of 28th February, 1852. Its peculiarity is, that the repayment of the loan is by an annuity terminable at a certain date; the date and the amount of annuity being so calculated, that when the last payment is made, the loan and the interest on it will be extinguished. Another method of describing it is as a loan repayable by instalments. The transaction is precisely regulated by the edict, which prohibits an advance on more than a half of the value of the property pledged or hypothecated. These several Companies were established by the French Government, with the privilege of making such advances.

Date certaine—A deed is said to have a *date certaine* (fixed date) when it has been subjected to the formality of registration; after this formality has been complied with, the parties to the deed cannot by mutual consent change the

date thereof. It is for this reason that third parties have not the right to question the date of a registered deed, which is said to have a *date certaine* (see *Enrégistrement*).

Déchéance—Forfeiture.

Déclaration de faillite signifies adjudication in bankruptcy.

Déclinatoires are pleas to the jurisdiction of the Court, also of *lis pendens* and of *connexité*.

Défaut congé—See Judgments. (Index.)

Défaut faute de conclure—see *ibid.*

Délaissement means abandonment.

Délibéré—After hearing the arguments of counsel, the judges sometimes adjourn cases to enable them to examine the documents and evidence before delivering judgment. This is termed *delibéré*.

Demande en revendication—see Bankruptcy. (Code.)

Dénonciation—Notification.

Description—The report drawn up by *huissier* to set forth the condition of certain articles in a suit; or in other words the contents of a *constat*. See *Constat d'huissier*.

Dessaisissement—When a person is declared bankrupt, he is immediately deprived of the enjoyment and administration of all his property; this deprivation, which extends to all his rights, is called *dessaisissement*.

D'office (*proprio motu*)—A judgment pronounced or an order made by a Tribunal *d'office* is one made of its own motion, and not pursuant to any special application, petition, or proceedings.

Domaine public—Public domain.

Domicil—The domicil of every Frenchman, as far as regards civil rights, is where he has his principal establishment or abode. A change of domicil is effected by the fact of a person taking up his residence in another place, with the intention of fixing his principal domicil there. The proof of such intention results from an express declaration before the municipalities of the place left, as well as to the municipalities of the new domicil. In default of such declaration, proof of intention depends on circumstances; but a temporary removal by any public appointment does not change the domicil; a life appointment does.

A wife claims the domicil of her husband; a minor, not

emancipated, that of the father, mother, or guardian; an interdicted person, that of his guardian; and a servant, that of his or her master or mistress, when living in the same house.

The domicile is the place where the rights of succession commence (*la succession s'ouvre*). When a deed contains a clause selecting a domicile other than the real one for the execution of such deed, any legal notice may be lawfully served at the specified domicile.

Domicilitaire—see Bills. (Index.)

Donneur à la grosse—see Bottomry. (Index.)

Donneur d'aval—Guarantor of negotiable paper other than by endorsement.

Donneur d'ordre—The party on whose behalf the drawer of a bill on behalf of a third party draws.

Dot signifies marriage portion.

Droits de condamnation—Taxes upon judgments, proportioned to the amount thereof.¹

Droits d'enregistrement—see *Enregistrement*.

Droit de gage—see the word *Privilege*. (Appendix.)

Droit d'enregistrement—see *Enregistrement*.

Droit d'exécution—The right of a stockbroker to sell the securities bought by him for account of a client, if the latter does not accept delivery thereof. The same expression is also applied to the sale by a stockbroker of securities deposited with him by his client, in order to guarantee the payment of operations for which the latter has given instructions..

Droit d'hypothèque—see the word *Privilege*. (Appendix.)

Droit de suite—This term is applied to the right which a creditor possesses to enforce his claim either upon real or personal property, even if such property passes into the hands of a third party. See *Privilege*. (Appendix.)

Ecrit enregistré—Any written document is so termed on which the registration duties have been paid, and which bears upon the face the stamp of the receiver. The date of *enregistrement* being necessarily correct, cannot be disputed even by third persons not parties to the deed; in that case the deed is said to have a *date certaine*.

Emploi—(equitable conversion)—When property covered by the *régime dotal* is sold, the proceeds of the sale must be reinvested for the benefit of the wife. It is the duty of

the purchaser to see that the price is so reinvested, and his payment is only final in so far as it has been reinvested as aforesaid. *See Régime dotal.*

Employé—The name given to every salaried person whose work is neither entirely manual nor entirely intellectual; a book-keeper, a cashier, a watchman, a salesman are *employés*; but this expression is never applied to young men engaged in the offices of *avoués*, *notaires*, *huissiers*, or *commissaires-priseurs*; these are termed *clercs*, an expression which belongs to them exclusively.

En brevet—An *acte* is said to be *en brevet* when a copy of it has not been recorded by the notary who drew it.

En commandite par actions—*see Société en commandite par actions.*

En commandite simple—*see Société en commandite simple.*

En communauté—*see Communauté de biens.*

Endossement à forfait—This is the endorsement of a bill of exchange, by a person who does not guarantee the payment thereof.

En état d'union—State of bankruptcy when the *concorda* has been refused by the creditors, and the liquidation of the estate has been decided upon for the common benefit.

En nom—*see Associé en nom.*

En nom collectif—*see Nom collectif.*

En participation—*see Société en participation.*

En recouvrement—An expression employed to declare that an endorsement made in favour of a person does not transfer to him the property in the bill of exchange, but merely constitutes an authority to such person to recover the amount of the bill of exchange.

En référé—Cases, special applications and summonses which are referred to the judge.

Enrégistré—*see Enrégistrement.*

Enrégistrement (registration)—is a formality which consists in inscribing on a register, specially kept for the purpose by the Government, a summary analysis of certain deeds and documents. At the same time that such analysis is inscribed upon the registers, the clerk places upon the deed a memorandum indicating the date upon which the deed was registered, and at the side of such memorandum an impression is made by a stamp. Enrégistrement or registration is the inscription of deeds and documents

upon the public register. They acquire thereby a fixed and certain date, even as regards third parties. A duty is payable to the State for each inscription, termed *droit d'enregistrement*.

Registration duty is payable upon each transmission of realty or personalty through decease, and in respect of every conveyance of realty *inter vivos*.

The law of the 23rd August, 1871, Art. 12, inflicts a penalty equal to one-fourth of the amount dissimulated upon all the parties jointly and severally who seek to conceal the real consideration for sales, &c., with intent to defraud the revenue.

Documents under private signature, conveying realty, leases, under-leases and similar assurances, must be registered within three months from their date.

As regards documents of the same nature executed abroad, the time is extended. (Law of Frimaire, an VII., Art. 22.)

Contracts under private signature, relating to other subjects, need not be registered within any specified period.

Agreements for the sale of businesses and good-wills must be registered within three months of their date. In default the duty is increased. (Law of 28th February, 1872, Art. 7.)

Wills drawn by or filed with notaries must be registered within three months of the decease of the testator. In default a double duty is payable.

When documents not registered are produced in evidence, the Court must order them to be deposited at the *greffe* for immediate registration.

Registration duties are fixed, or *ad valorem*.

Certain duties are payable upon documents which are registered.

Registration offers this advantage: that if the document is lost or destroyed, its existence can be proved by a certified copy of the analysis of the document inscribed upon the register. Besides this, the deed acquires by the fact of registration a certain fixed date, which can be invoked against third parties who are not parties to such deed.

Exceptions correspond to pleas of abatement in England.

Escroquerie—Signifies fraud, swindling, etc.

Ester en justice—To institute legal proceedings.

Excusabilité—If the bankrupt has been guilty of no fraud or gross negligence, the creditors can, in meeting assembled, declare him *excusable*. Formerly, the effect of this declaration was to release the bankrupt from imprisonment, in case the creditors refused to grant the *concordat*.

Exécution—is the sale by the creditor of the property belonging to his debtor.

Exécution—is the sale or the repurchase made by a stock-broker in virtue of his *droit d'exécution*. See the word *droit d'exécution*.

Expert—This expression is practically equivalent to "Expert," but a distinction must be made, for in France an expert is an officer of the Court, and he draws up a report very much after the fashion of a referee or master in Chancery.

Faillite—see Bankruptcy.

Ferme—To be executed forthwith and without condition.

Fonds perdus—It is said that a capital is invested à *fonds perdus* when it is stipulated that in consideration of the payment of an amount as interest higher than the normal rate, the lender shall be repaid his capital in this manner. The borrower, after having paid the interest during the period determined, is free as regards the capital itself.

Force armée—This term comprises the armed aid which any person has the right to demand for the purpose of executing a judicial decision; such are *gendarmes* and policemen. Their services must be applied for through the *commissaire de police*.

Force majeure—This term is used with reference to all circumstances independent of the will of man, and which it is not in his power to control, and such *force majeure* is sufficient to justify the non-execution of a contract. Thus, war, inundations, and epidemics, are cases of *force majeure*; it has even been decided that a strike of workmen constitutes a case of *force majeure*.

Fréteur is the owner or person who lets a ship on hire.

Gage—see the word *Privilege*. (Appendix.)

Gardes de Commerce—Special police for arrest for debt. See Imprisonment for debt and Index.

Gérants are managers of a Company.

Greffe—Office of the clerk of the Court where judgment rolls are drawn up and recorded.

Greffier—Clerk at the Court. *See* Index.

Grosse—*see* *Contrat à la grosse*.

Homologation—means confirmation. (*See* Bankruptcy.)

Huissiers—Marshals, process-servers, sheriffs' officers. (*See* Index.)

Hypothèque—A mortgage (*hypothèque*) can only arise in the cases and according to the formalities prescribed by law, and may be either *Conventionnelle*, *Judiciaire*, or *Légale*. A legal mortgage is one that is cast by the law. A judicial mortgage is one that results from judgments. Conventional mortgage results from agreements, deeds and contracts. The following kinds of property only are capable of being mortgaged :—

1. Saleable real estate and fixtures.
2. The usufruct of such property and fixtures as long as the usufruct lasts.

When the fixtures are separated from the real estate they cease to be covered by the mortgage. (Code Napoléon, Arts. 2,114—2,217.) (*See* Appendix.)

Hypothèque Conventionnelle—Conventional mortgages result, as we have said, from agreements, deeds, and contracts. Conventional mortgages can only be executed by persons capable of alienating their real estate. Persons whose right to real estate is conditional, or liable to be divested, can only execute a mortgage upon their interest in the same. Conventional mortgages can only be effected by an authentic deed executed before two notaries or one notary and two witnesses. Contracts entered into in a foreign country do not confer a mortgage upon property in France, unless so provided by international treaties. (*See* Appendix.)

Hypothèque judiciaire—The lien which attaches to the real estate of a party in a suit when judgment has been rendered against him.

It attaches not only upon the real estate of which the party is seised at the time the judgment is rendered, but upon all real estate that he may acquire until the judgment is paid. This subject is treated in the Code Civil.

This lien does not attach by virtue of an arbitration award until the award has been rendered executory by judicial decree.

Foreign judgments do not constitute liens upon land

until they have been rendered executory by *exœquatur* in France, unless there is a special treaty provision to the contrary. (*See* also Appendix.)

Hypothèque légale—The rights and claims which give rise to legal mortgages are:—1. Those of married women upon the property of their husbands. 2. Those of minors and interdicted persons upon the property of their guardians. 3. Those of the State, parish and public institutions upon the property of their treasurers and responsible administrators. A creditor who has a legal mortgage may enforce his right upon all the real property belonging to his debtor, and upon that which he may afterwards acquire with the modifications contained in the Code Civil. (*See* also Appendix.)

Inscription—Record: used in recording mortgages.

Inscription means registration in certain cases.

Instructions Ministérielles.—Instructions from a minister to his subordinates.

Interdiction—Every person who, on account of insanity, has become incapable of controlling his own interests, can be put under the control of a guardian, who shall administer his affairs with the same effect as he might himself. Such a person is said to be *interdit*, and his status is described as *interdiction*.

Majority is fixed at the completion of the 21st year, at which age every man is considered in full possession of all civil rights.

Idiotcy, insanity and madness, constitute incompetency, and consequently are followed by *interdiction*.

Every relative, husband or wife, may apply to a Court of First Instance to have interdiction adjudged against his relative, wife or husband, if he or she has reasonable cause for so doing. In cases of madness, if interdiction is not demanded (*provoquée*) by the spouse or relative, it must be done by the public prosecutor, who may also demand it in cases of idiotcy or insanity, when the idiot or insane person is unmarried and without relatives.

All actions of interdiction must be brought before the Court of First Instance, when the Court will call a family council, constituted as previously stated, to give their advice respecting the state of the person whose interdiction is demanded. Those who bring the charge cannot be

members of the family council; but a husband or wife, and the children of the person whose interdiction is demanded, may be admitted, but they have no voice in the deliberation. Interdiction must be adjudged publicly, and in the presence of interested parties, or after they have been summoned to appear.

In nonsuiting the plaintiffs, the Court, if necessary, may make an order that the defendant shall not hereafter plead in a suit, nor compound, nor borrow, nor receive money or goods, nor give a discharge for them, nor alienate nor mortgage his estate, without the concurrence of a trustee appointed by the Court. In case of an appeal against the judgment of the Court of First Instance, the Court of Appeal may, if necessary, make or order a fresh examination. All final judgments of interdiction, or appointments of trustees, must be at the instance of the instigators, notified to the parties, and posted within 10 days in the hall of the Court, and at the offices of the notaries of the district, after which all subsequent transactions of the interdicted persons, without the concurrence of the trustee, are void; and if the insanity was notorious, transactions previous to the judgment may also be repudiated.

After the death of a person, acts done by him cannot be impugned on the ground of insanity, except his interdiction had been demanded or adjudged before his death, or unless the very transaction bears evidence of insanity.

If there is no appeal, or if the judgment has been confirmed in appeal, a guardian and a supplementary guardian are appointed as prescribed in cases of minority, guardianship and emancipation.

A husband is, of right, the guardian of his interdicted wife. A wife may be appointed the guardian of her interdicted husband; but in this case the family council prescribes the rules for her administration, leaving the wife only such remedy as a Court may grant when she supposes herself wronged by the rules imposed upon her by the family council. No person except a husband or wife, grandparent, child, or grandchild, is bound to remain the guardian of an *interdicted* person more than ten years. At the expiration of that period a guardian may claim his release, and demand that some one else be appointed in his place.

The income of an *interdicted* person must be applied in alleviating his misfortune, and providing remedies for his cure, according to the amount of his property. The family council may order that he be attended at his own house, or that he be placed in a private establishment, or even in an asylum.

When the marriage of the offspring of an *interdicted* person is proposed, the marriage portion, or the *avance-ment hoirie*, and other matrimonial settlements, are ruled according to the advice of the family council, confirmed by the Court of First Instance.

Interdiction ceases when the cause is removed, but the same formalities that established the interdiction must be gone through to annul it; and after judgment is pronounced the *interdicted* person resumes the exercise of his full rights.

The status of *interdiction* is also the legal result of a criminal conviction.

Intervention—Acceptance by intervention or for honour.

Inventaire—Inventory; used technically of the inventory drawn up in case of death or bankruptcy.

Journal officiel—A public journal, published by the Government; it contains the laws and all public proceedings; it is to this extent a duplicate of the *Bulletin des Lois*, but it contains divers other matters, such as the debates of Parliament, and all the preliminaries of the laws published.

Jours de Planche—see *Staries*.

Juge-Commissaire—see chap. on Bankruptcy. The *juge-commissaire* corresponds somewhat with English registrars in bankruptcy.

Juge-Commissaire is one of the judges of the Tribunal of Commerce appointed as a registrar to superintend the operations of a bankruptcy and to make certain orders and regulations in relation to its conduct and management.

Juges correctionnels—This expression is employed to designate the *Tribunal Correctionnel*. See this word.

Juge-de-Paix—Justice of the peace.

Jugement contradictoire is a judgment given against a party who has appeared and put in a defence.

Jugement d'homologation—Decree confirming the *concordat*.

Jurisdiction Administrative—The above is the jurisdiction

of the *Tribunaux Administratifs*. See *Tribunaux Administratifs*.

Jurisdiction Civile—Organisation of justice in civil cases.

Jurisdiction Commerciale—Jurisdiction of the *Tribunaux de Commerce*.

Jurisdiction Correctionnelle et Commerciale—Jurisdiction of the *Tribunaux Correctionnelles* and of the *Tribunaux de Commerce*.

Jurisdiction criminelle—Jurisdiction of the Criminal Courts.

Justice-de-Paix—Justice of the peace.

Le connaissance c'est la marchandise—This is an axiom of law which signifies that the bill of lading represents absolutely the merchandise itself.

Lettre de voiture—Way bill.

Libération—Released.

Liquidateurs judiciaires—The above are persons appointed by the Court to wind up partnerships. In some cases the liquidator named is one of the partners, but generally he is a retired barrister or solicitor possessing the confidence of the Court, and whose occupation specially consists in attending to such liquidations as are confided to him. When the liquidation is concluded, he makes up an account setting forth the operations of the winding-up. This account he submits for approval to the parties interested, and in the event of any of them refusing to approve it, he is summoned before the Court by the liquidator for judgment as to whether all the operations of the winding-up have been properly carried out, and discharging him from the duties which have been confided to him.

Liquidation—Partition in cases of *separation de biens*.

Litispendance signifies *lis pendens*—see *Déclinatoires*. The French Courts will not stay an action upon the ground that the defendant is being sued in a foreign Court, and may be exposed to pay twice over.

Art. 171 of the Code of Civil Procedure provides, that “if a suit has been previously brought in another Court with the same object, an adjournment can be claimed and ordered.” But it has been decided that the above enactment applies to causes pending in the French Courts only, principally upon the ground that as future foreign judgments could not be executed in France until rendered

executory by the French Tribunals, they should not arrest the course of justice.

Magasins généraux—Bonded warehouses (*see* Law).

Mairie—The Government building of each *commune*. It contains the record office of all civil acts, and the list of voters; and it is there that political and municipal elections take place.

Majorité—*see* *Interdiction*, also *Mineur émancipé*.

Mandataire—Agent acting under a power or authority.

Mariage en communauté—*see* *Communauté de biens*.

Mémoire is a document in the form of a petition, by which appeals to the Court of Cassation are initiated. *See also* *Chambre des Requêtes*.

Mineur émancipé—The age of majority is fixed by law at 21 years, but a young man can be relieved of the incapacity which results from minority at the age of 15 years and upwards, if he has a father and mother, and from 18 years upwards, if, having lost his father or his mother, he is subject to a guardian. He is then said to be *émancipé*, and his new status is called *émancipation*.

Ministère—The building which contains the offices of the Minister or Secretary of State.

Ministère Public—This is the generic name given by the law to the *Procureurs-Généraux* and *Avocats-Généraux*, *Procureurs de la République*, and the substitutes of the *Procureurs de la République*.

Mutation en Douane—Mutation is the generic word for the transfer of property by purchase or descent. *Mutation en Douane* is the equivalent for ships to what *transcription* is for real estate. *See* *Transcription*.

Myriamètre is a measure of distance comprising 10,000 mètres = 6·2138 English miles.

Nolis—*see* *Nolisement*.

Nolisement signifies freight.

Nom collectif—*see* *Société en nom collectif*.

Notaire—*see* *Index*.

Octroi—City dues.

Officiers Ministeriels are legal officials engaged in various branches of the law, enjoying a monopoly in their respective professions. They are therefore compelled to act when their services are legally requisitioned. The following are *officiers ministeriels*:—*greffiers*, *huissiers*, *avoués*, *com-*

missaires-priseurs, *notaires* and *gardes du commerce*. (See these headings.) *Avocats*, or counsel practising in the *Tribunals* of First Instance and in the Courts of Appeal, are NOT *officiers ministériels*. The number of such counsel is unlimited; but *avocats à la Cour de Cassation* and au *Conseil d'Etat* are *officiers ministériels*.

Opposition—This word is used in three different senses :—

1. Motion to open a judgment by default.
2. *Saisie-arrêt*—Attachment.
3. Injunction.

Opposition is the mode adopted by a defaulting party, of petitioning the Court which has given judgment against him to retract the decision rendered in his absence, and to readjudicate upon the case after hearing his defence. (See Index.)

Ordonnance de Référé—see *Référé*.

The above are orders made by the president for an examination to be conducted by experts, or for the carrying out of any other provisional measures not prejudicial to the rights of either of the parties engaged in an action.

Pacotille—Goods put on board by the crew without paying freight.

Palais de Justice—The *Palais de Justice* is the building in every city which contains the *Tribunal* and other necessary offices for the carrying on of judicial proceedings.

Papiers timbrés—All manuscripts which have to be submitted to registration must be written upon special paper stamped by the Government, according to a tariff which varies with the length of the papers in legal documents, or according to the amount set out in the document when it relates to an admission of debt, a bill of exchange, or a promissory note.

Par actions—A *Société* is said to be *par actions* when its capital is divided into shares.

Par Procuration—By power of attorney.

Parquet—The word *parquet* has, in legal phraseology, two significations. It is employed to designate the magistrates who are charged with the conduct of proceedings in criminal cases and misdemeanours, and also to express that part of the *Bourse* which is reserved for stockbrokers.

Parquet du Tribunal—The offices which are reserved in the *Palais de Justice*, to the *Procureur de la République*

and to his deputies. The *Procureur de la République* and his deputies are also designated by the expression *officiers du parquet*, or by abbreviation by the single word *parquet*.

Part d'intérêt—Expression used to denote the shares of part owners in a *Société* other than a *Société par actions*.

Participation—see *Société en participation*.

Partie civile—In a correctional or criminal prosecution, the complainant is called *partie civile*, when he joins in the prosecution instituted by the *Ministère Public*, and asks for damages for the prejudice which has been caused to him.

Payer par intervention—Payer for honour.

Peines de discipline—Measures of discipline governing French barristers, solicitors and other officials.

Personne morale—This name is used to express associations of persons to whom the law gives the right of buying, selling, appearing before the Courts, under the name which they have chosen to give to their association. These associations have the same rights as an individual; they have a domicile and a personality and rights distinct from those of the members who compose them. They are called *personnes morales*, because their existence is an abstract creation of the law. The word *moral* is employed in distinction to the word *physique* or *matériel*, which applies to living persons in their physical or material state. Mercantile Companies, the State, religious communities recognised by the Government, certain benevolent establishments recognised by the Government, are instances of *personnes morales*. It will be seen that it is practically equivalent to the English term Corporation.

Possession vaut titre—This is an axiom of law which signifies that the fact of possession of personal property constitutes in itself a sufficient right of ownership, and that the holder has no need to prove the legitimacy thereof. But this principle is only applicable when the fact of possession is unaccompanied by other circumstances.

Pour acquit—is the formula which a creditor prefixes to his signature when he gives a receipt.

Pourvoi en Cassation—Signifies an appeal to the Court of Cassation.

Préfecture—The territory of France is divided into eighty-six departments. The principal town of each department

is called *Préfecture*. The department is administered by a *Préfet*, who is under the direct orders of the Minister of the Interior. Each department is divided into a certain number of districts called *arrondissements*, and administered by a *sous-Préfet*. The principal town of the district is called a *sous-Préfecture*. This denomination is also given sometimes to the district itself. The district is itself divided into a certain number of *cantons*, and the *cantons* are subdivided into *communes*.

Preneur—see Bills of Exchange.

Prescription—see fully hereon in Appendix.

Président—Presiding judge. The Court is composed of at least three judges. The voice of the presiding judge is conclusive; he has divers functions which are purely personal, as, for example, the right to sign orders which are submitted to him by petition.

Privilège—A creditor is said to have a *privilège* when, by virtue of the law, he has the right to demand payment, in preference to the other creditors, out of the proceeds of special property of his debtor, or even of the general estate of the debtor; properly speaking, the word *privilège* should only be employed to designate the preferential rights created by the law, and not those which result from the agreements of the parties; thus, the preferential right which the law accords to a landlord to be paid his rent, and that which it grants to *employés* for the payment of their salaries in case of bankruptcy, constitute *privilège*; but the right which a creditor may possess to be paid preferentially out of the proceeds of personal property which has been given him as security, or out of the price of real property which has been mortgaged to him, constitute preferential rights designated by the terms *droit de gage* (in the case of personal property) or *droit d'hypothèque* (in the case of real property), or simply *gage* or *hypothèque*. A mortgage granted upon real property gives to the creditor the right of seizing and selling such real property, even when it has passed into the possession of a third person: this right is called *droit de suite*. (See Appendix.)

Procédure en Cassation.—The practice in the Court of Cassation is special. A *mémoire*, in the form of a petition, signed by an *Avocat à la Cour de Cassation*, is filed in the

offices of the Court, but it is not served upon the opposite party, who is not represented at the outset of the proceedings. The case is brought before the *Chambre des Requêtes*; one of the judges reports thereon, the appellant's counsel and the *Ministère Public* submit their observations, and the Court gives its decision. If the appeal is held to be untenable, the petition is rejected. Such decision is given with the reasons upon which it is based, and is absolutely final.

If the Court considers the appeal admissible, it is sent up to the *Chambre Civile*.

In the latter *Chambre* the respondent is represented, and the *avocats* of both parties argue the case. The *Ministère Public* is also heard. The Court delivers its decision. If it rejects the appeal, its judgment terminates the litigation. If it admits it, the judgment appealed against is quashed, and the case referred back to another tribunal of the same order, which is designated.

Procédure sommaire—Practised in cases of urgency. Although the practice was instituted for the purpose of arriving at a speedy conclusion, it is not more expeditious than the ordinary one.

Procès verbal—A *procès verbal* is a written report, which is signed, setting forth a statement of facts. This term is applied to the report proving the meeting, and the resolutions passed at a meeting of shareholders, or to the report of a commission to take testimony. It can also be applied to the statement drawn up by a *huissier* in relation to any facts which one of the parties to a suit can be interested in proving, for instance, the sale of a counterfeited object. Statements drawn up by other competent authorities, of misdemeanours or other criminal acts, are also called *procès verbaux*.

Procès-verbal de Carence—see *Carence*.

Procureur de la République—see *Index*.

Procureur Général—see *Index*.

Promesse simple—This term is applied to the contract which results from a bill of exchange or a promissory note which, by its form, does not fulfil all the conditions required by the law.

Protêt—Protest of negotiable paper.

Provision—see *Bills of Exchange*.

Prudhommes—see *Conseil de Prudhommes*.

Quintal—a unit of measurement employed in estimating the burden of ships, equivalent to about an English hundred-weight.

Récepissé de cotisation—Receipt setting forth extent of interest subscribed by a member of a mutual insurance Company.

Receveur-Central—see *Receveur-Général*.

Receveur-Général—The name given to the officer who receives all the State taxes in each department; in Paris he is called the *Receveur-Central*.

Rechange—see Bills of Exchange.

Recommandataire—see Chapter on Bills.

Référé—see *En référé*.

Référé—In civil cases is a simple and speedy procedure permitted in urgent cases. It is an application to a judge in chambers.

Régime—The name *Régime* is given to the various species of contracts which govern the pecuniary conditions of marriage. There are three kinds of *Régime*, viz.:—*Régime de communauté*, *Régime de séparation de biens*, and *Régime dotal*. Each of these kinds of contract possesses special rules, determined by law; but the parties have the right to modify these rules, or to make any stipulations they may think proper. Such stipulations must be made before marriage, and cannot be modified afterwards. (See also Appendix.)

Régime de communauté de biens is one of the systems of marriage contract which the parties can adopt. This system is presumed to be adopted when the marriage is celebrated without any contract being drawn up. The conditions of such contract are regulated by the Civil Code. All the personal property which the parties possessed at the moment of the marriage, and all that which may devolve upon them during the marriage, either by succession, donation, or otherwise, is comprised in the *communauté*. Their real property alone remains the separate property of the party to whom it belonged. The husband is the owner of all the property composing the *communauté*, and can dispose of it at his free will. The above are the principal provisions of the law, but they can be departed from by the will of the parties, expressed in a proper marriage contract. (See also Appendix.)

Régime de communauté—see *Régime de communauté de biens*.

Régime dotal—The *régime dotal* is one of the systems of marriage contract which the parties can adopt. Under this *régime* the real property may be sold upon the condition that the price realised be re-invested either in lands or French *rentes*, or shares of the Bank of France or railway bonds guaranteed by the French Government. A third party who purchases *dotal* real property can be compelled to pay the price over again, if he has not assured himself that the purchase money has been re-invested in conformity with law or in conformity with the marriage contract. Real estate so held cannot be sold on execution, the revenue of such lands belongs to the husband. The revenue can be seized to the extent of the surplus over the expenses of the married couple. Every sale of *dotal* real property which is not authorised by the Tribunal is void, and can be so declared on the application of the husband or of any interested party. Personal property of all descriptions can be declared *dotal*. In the latter case the above clauses respecting real property apply to it. (See Appendix.)

Régime de separation de biens—see *Régime and Séparation de biens*.

Régime de l'union—see *Régime and Union*.

Règlement d'Administration Publique—Ordinances drawn up and voted by the *Conseil d'Etat*, with the object of providing the methods and means necessary to render certain laws executory. These Ordinances provide for all the details of execution into which the general legislation may not have entered: when they affect the police they are called *Règlements de Police*.

Règlement de Police général ou particulier—see *Règlement d'Administration Publique*.

Réhabilitation—A bankrupt is not only deprived of the administration of his property, but he is also stripped of his rights as citizen; for example, he cannot serve on a jury, he cannot vote, he cannot take part in the Stock Exchange. The composition returns to him the administration of his affairs, but it is only by *réhabilitation* that he regains his political rights and rights of citizenship.

Remise de place en place—This expression signifies the condition required for the validity of a bill of exchange.

Remisier—Outside stockbroker.

Rente—Name given to Government loans.

Report—This term (which is equivalent to the word *contango*, employed in the London Stock Exchange) is applied to the operation by which a stockbroker prorogues or “carries over” with the view of realising at a higher price the settlement of a bargain which has been entered into.

Répertoires—Registers kept by notaries and *huissiers* of deeds and documents drawn by them.

Représentation—The production in evidence of particular items in a book of accounts. A distinction should be made between *représentation* and *communication*. The former is the production in evidence of a specific portion of a book of accounts, the latter is the production of the book itself.

Requête—Petition. See *Ajournement*; see also chap. on Court of Cassation.

Retention—see *Droit de rétention*.

Retour sans frais—Formula put upon a bill of exchange to signify that the drawer of a bill of exchange waives protest and will not be responsible for costs arising thereon.

Retraite—Any endorser of a bill of exchange who pays the same because it has not been met at maturity by the drawee may himself draw a new bill, called *retraite* upon the preceding endorser in order to reimburse himself the moneys that he may have paid.

Revendication—Replevin in case of bankruptcy or attachment.

Ristourne—Returns in marine insurance.

Saisie execution—Execution or distress.

Saisie foraine—A species of attachment.

Saisie réelle—Seizure of realty.

Sauf conduit—Immunity from arrest granted under certain circumstances to persons under charge or indictment.

Seing—Signature.

Séparation de biens—By the above is meant the legal status of the husband and of the wife, who, according to their marriage contract or by judicial decision, possess each the property in and the administration and enjoyment of their respective estates.

Séparation de corps (judicial separation)—*Divorce* has been abolished by the law of 1816, but judicial separation can

still be resorted to. The principal effects of judicial separation are the following :—

The parties have separate households.

The *Tribunal* decides who shall have the custody of the children, and if the parties are married under the *régime de communauté*, their property must be divided and themselves remain *séparés de biens*, i.e., independent of one another as regards property; the marriage in all other respects remains effective.

Séparé de biens—This is the status of married parties who have upon their marriage adopted the system of *séparation de biens*, or when, pursuant to a judgment, they are declared to be separated as regards their property, after having been married under some other system.

Signification—A writ served by *huissier*.

Société—The definition of this expression is given upon p. . It is employed to designate Companies and partnerships of every kind.

Sociétés à capital variable—see Law on Companies.

Sociétés Anonymes—see *ibid.*

Sociétés en commandite—see *Sociétés en commandite simple*.

Sociétés en commandite par actions—see Law on Companies.

Sociétés en commandite simple—see *ibid.*

Sociétés en nom collectif—see *ibid.*

Sociétés en participation—see *ibid.*

Sociétés par actions are Companies divided into shares.

There are two kinds of *Sociétés par actions*, viz., *Sociétés anonymes* and *Sociétés en commandite par actions*. A third species can be added, viz., *Sociétés à capital variable*, but this latter kind of Company applies only to co-operative Societies, and is little known in France.

Sommaton—A *sommaton* is a demand served by a *huissier*, by which one party calls upon another party to do or not to do a certain thing. The above document has for its object to establish that upon a certain date the demand was made.

Sous-Préfecture—see *Préfecture*.

Sous seing privés—A document under private signature.

Sous signatures privées—see *Sous seings privées*.

Staries—The period allowed for the unloading of a ship.

Statut personnel—The body of law that defines and controls

capacity and personal relations. So also the body of law that governs real estate is termed *Statut-Réel*.

Statuts sociaux—Articles of Association.

Stellionataire—A party who fraudulently mortgages property to which he has no title.

Subrogation—Subrogation.

Surenchère (sale at auction)—A party desirous of repurchasing property at auction before the Court can, by offering one-tenth or one-sixth, according to the case, in addition to the price realised at the sale, oblige the property to be put up once more at auction. This bid upon a bid is called a *surenchère*.

Surestaries—When the time provided in the charter-party for loading or unloading has expired, the captain is still bound to accord a customary delay, which in most ports consists of 15 days. This delay is termed *surestarie*. If after this delay the shipper requests an extension, the captain may grant it. This new delay is termed *contrestarie*.

Syndic—This is the title given to the person who is commissioned by the Tribunal to administer a bankruptcy; he fulfils the same functions as the trustee in English law, or assignee under the United States statutes. This title is also given to the President of the Committee of the Stock Exchange.

Syndic provisoire is a temporary *Syndic* appointed by decree of adjudication. *See Syndic*.

Tarif d'abonnement—A scale of duties to be paid for *abonnement*.

Taxe proportionnelle—Government taxes calculated *ad valorem*, as distinguished from those which are fixed and do not depend upon the amount concerned in the *acte*.

Tirage pour compte—Drawing for account of a third party.

Tireur pour compte—Drawer for account of a third party.

Tireur—Drawer.

Tiré—Drawee.

Titres—This word possesses various significations; sometimes it is applied to the document which proves the claim of a creditor; at others to the Stock Exchange securities, shares or bonds, French Government Funds, or those of foreign Governments.

Titres au porteur are shares, bonds or all Government *Rentes*, of which the interest and the capital are payable to

the bearer thereof, without its being necessary for him to prove that he is the owner, whether by transfer or endorsement.

Titres de Rente sur l'Etat—French Government Securities.

Titre exécutoire—This appellation is given to judgments or notarial deeds, because by virtue of these processes the creditor may proceed to execution, that is to say, seize and sell the goods of his debtor.

Tonneau de jauge—Unit of measurement, employed in estimating the burden of ships, equivalent to about an English ton.

Transcription—Record of deeds transferring real estate. In France, as in the United States, deeds are copied *in extenso*, in registers kept at the *Bureau des Hypothèques*.

Tribunal civil—*see* special chapter.

Tribunal de Commerce—The Court that has special jurisdiction over merchants and mercantile suits.

Tribunal de Police Correctionnelle—*see Tribunaux Correctionnelles*.

Tribunaux Administratifs are tribunals which adjudicate upon acts arising from the agents of the Government, which have exclusive jurisdiction when the Government is one of the parties in suit.

Tribunaux Correctionnels—Courts composed in the same manner as the Civil Tribunals, with jurisdiction upon misdemeanours.

Union—*see* Bankruptcy.

Valeur à l'encaissement—Equivalent to “endorsed for collection.”

Valeur en espèces—Value received in cash.

Valeur en marchandises—Value received in goods.

Valeur en compte—Value received in account.

Vendémiaire is the name of the month which, according to the Republican calendar adopted in France in 1792, covered the time between the 22nd September and the 22nd October.

Visà pour timbre—When a manuscript has not been executed upon stamped paper, and the law requires that it should be so executed, the law may be complied with by getting the manuscript *visé pour timbre*. It is then said to receive a *visà pour timbre*.

Visé pour timbre—*see Visà pour timbre*.

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| STAFFORD'S COMBINED WRITING & COPYING VIOLET INK ... | Quarts ... | 3/- | 24/- |
| | Pints ... | 2/- | 16/- |
| | Half-pints ... | 1/- | 8/- |
| STAFFORD'S KNICKERBOCKER INK ... | Quarts ... | 2/- | 16/- |
| | Pints ... | 1/- | 8/- |
| STAFFORD'S COMBINED WRITING & COPYING FLUID (Blue-black) ... | Quarts ... | 3/- | 24/- |
| | Pints ... | 2/- | 16/- |
| | Half-pints ... | 1/- | 8/- |
| STAFFORD'S COMBINED WRITING AND COPYING CARMINE ... | STOPPERED. | | |
| | Pints ... | 6/- | 4-8 |
| | Half-pints ... | 3/- | 24/- |
| | Five-ounce ... | 2/- | 16/- |
| STAFFORD'S INDELIBLE (OR MARKING) INK ... | WOOD TOPPED CORKS. | | |
| | Half-oz. Bots. 1/- | | 8/- |
| These contain about four times the quantity of the ordinary marking ink bottles, sold at the same price. This ink is warranted not to wash out, and will resist the action of acids. | | | |

STICKWELL & CO.'S

CELEBRATED MUCILAGE.

| | | | |
|--------------------|-----|------|--|
| LIPPED. | | | |
| Quarts ... | 4/- | 32/- | |
| Pints ... | 2/- | 16/- | |
| CONE, FLINT GLASS. | | | |
| Eight Ounce | 1/6 | 12/- | |
| CONE, BELL TOP. | | | |
| Four Ounce | -/8 | 5/4 | |

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